# **TABLE OF APPENDIXES**

APPENDIX A:	82
Overview of Conflict Management in the Workplace	
APPENDIX B:	88
Various Types of Alternative Dispute Resolution (ADR)	
APPENDIX C	92
Overview of Federal and VA ADR Statutes, Policies, Directives and Initiatives	
APPENDIX D:	98
When to Use and not use Mediation	
APPENDIX E:	100
<b>Common Questions and Answers about Mediation</b>	
APPENDIX F:	104
An Overview of the Mediation Process	
APPENDIX G:	106
Core principles for non-binding federal workplace ADR/Mediation Programs	
APPENDIX H:	108
Statement from VA National Partnership Council endorsing ADR Efforts in the Department of Veterans Affairs	
APPENDIX I:	110
Sample Memorandum of Understanding	



APPENDIX J:	113
Sample	
Labor/Management Alternative Dispute Resolution Agreement	
APPENDIX K:	116
Key Players And Their suggested Roles	
APPENDIX L:	122
Using Employees as Mediators	
APPENDIX M:	127
Options for obtaining Mediators	
APPENDIX N:	133
VA Office of General Counsel: An ADR Resource	
APPENDIX O:	147
Mediation Awareness Training Evaluation Form	
APPENDIX P:	150
ADR Training and Information Resources	
APPENDIX Q:	155
VA's ADR WebSite	
APPENDIX R:	156
ADR Resource WebSites	
APPENDIX S:	158
Samples of Various VA Facilities' Policies, Forms, and Brochures	158
Guidelines for Drafting Mediation Program Policies	159
Sample Mediation Program Policy	160
Sample Mediation Program Policy	164
Sample Mediation Program Policy	167



Sample Agreement to Mediate	172
Sample Agreement to Mediate	174
Sample Survey/Evaluation Form	196
Mediation User Satisfaction Survey	198
Sample Survey/Evaluation Form	201
Sample Survey/Evaluation Form	204

# Appendix A

## **APPENDIX A:**

# OVERVIEW OF CONFLICT MANAGEMENT IN THE WORKPLACE

#### What is Conflict?

- Conflict occurs when two persons disagree about something
- Conflict can be intrapersonal, interpersonal, small group, large group or between groups
- Conflict is the clashing of ideas, interests or behaviors of two or more individuals

While it is true that we can find much in common with people we work and interact with, each of us is also different and unique. Conflict often arises because of differences in:

- Interests
- Goals
- Information
- Cultures
- Genders
- Races
- Work ethics
- Work styles

- Emotions
- Perceptions
- Interests
- Personal styles
- Behavioral traits
- Stereotypes
- Values
- Personal "Baggage"
- Approaches to authority

Conflict is a natural part of life; it is predictable and happens to us often. Conflict can be positive and healthy, as well as a learning and growing experience. After all, if we did not have our differences, the workplace would be mundane and unchanging. It is our differences that encourage us to look at things in new ways. When conflict is dealt with in a healthy way, a solution can generally be found that satisfies everyone involved. **That is called managing or dealing successfully with conflict.** 

#### How do we deal with Conflict?

**Flight**: avoiding conflict and hoping that it will go away.



**Fight:** using authority, rights or force to attempt to prevail over others.

**Unite:** talking with others to develop solutions that will satisfy mutual interests and result in mutually acceptable resolutions.

Customarily, we handle conflict through avoidance or position-based competition. In the avoidance mode, people in conflict simply avoid dealing with the conflict in order to "keep the peace". While this method may be useful if the parties need to "cool off", it is usually non-productive if the parties let the conflict fester and grow.

In the position-based competitive approach, we hold to our positions and try to prevail over the other person by using our position, rights, or authority. Differences are settled through deference to the more powerful. While this is often an effective and necessary form of conflict resolution, it is usually a winlose situation and does not contribute to creating more cooperative and positive working relationships.

As a result, when parties unite and work together to mutually solve problems and create solutions which meet their commons interests, we find that relationships are strengthened and outcomes are more "win-win". This approach to conflict management is called Interest-Based Problem Solving (IBPS).

#### **Interest-Based Problem Solving (IBPS)**

IBPS is one of the most effective methods for dealing with conflict in the workplace.

What IBPS focuses on are the times when it makes sense for people to sit down together to see if they can solve conflict by talking about their needs and mutual concerns, and by collaborating on what it will take to resolve those needs and concerns.

People who are in conflict with each other often have common interests. In the workplace for example, common interests include: the overall success of the organization, communication and teamwork, professional competence, quality and productivity, ethical treatment, and recognition of our diversity.

IBPS has some significant **advantages** over avoidance and other traditional power or rights-based approaches to conflict resolution:

- The parties will be more likely to feel that the decision-making process has been a fair one.
- The parties will tend to be more committed to carrying out the agreements made because they are the parties' own agreements, not decisions imposed on them by a third party.
- They are likely to have a greater understanding of, and respect for, each other.



- If future conflicts arise, they will have an example to follow, making it easier for the parties to address the conflict and deal with it constructively.
- IBPS often costs less in the long run than power or rights-based ways of resolving conflict. IBPS produces results and consistently maintains relationships between the parties - it may even improve the relationship.

#### The basic elements of IBPS include:

- Disentangling relationships from substantive issues
- Listening actively
- Focusing on interests
- **Sharing information**
- Inventing options without commitment
- Using external standards to persuade
- Knowing your best alternative to a negotiated agreement (BATNA).

TRADITONAL TECHNIQUES	INTEREST BASED PROBLEM SOLVING
Goal is victory	Goal is mutual gain
Relationships are adversarial	Participants view themselves as collaborators and problem solvers
Communication tends to be calculated, one way, and through intermediaries	Interests tend to be clarified by the individuals involved in the problem, communication is open and two-way
Interests are often hidden, negotiate by withholding information	Information fully exchanged; options created; individuals fully discuss options
Issues are discussed based on rights and positions, who is right or wrong, offers and threats are made	Problems and concerns are discussed with an eye to what each individual needs; interests are fully explored
Few if any new ideas or creative options are discussed	Brainstorming techniques are used; creative options are discussed to build a joint solution
Being creative is dangerous	Being creative is encouraged
Solutions	Alternatives are examined
Contests of will encourage being stubborn	Steps are taken forward by working together, this encourages parties to work together
Decision is made by compromise with each side giving up something and someone wins and someone losses	Decision is reached by both parties by consensus, each party can live with their solution



## Four Steps to Interest-Based Problem Solving

#### Step 1 – Raise the Issue

- Raise the issue you want solved
- Clearly express the problem and the effect it has on you
- Show respect to the other parties
- Listen to the other's point of view

#### **Step 2 – Discover the Underlying Interests**

- Explore your position and issues
- Ask questions...why?
- Identify the basic needs of the other parties

#### **Step 3 – Invent Options for Mutual Gain**

- Brainstorm as many ideas as possible
- Build on each other's ideas
- Do not "put down" any ideas at this point
- Be open-minded

#### Step 4 - Develop Agreement Based on Objective Standards

- Establish mutual standards as to what will be acceptable
- Evaluate options as potential solutions
- Identify advantages to each option
- Select option that has the most advantages and meets the needs and interests of both parties

# Conflict that is handled well can help:

- Develop more understanding of positions and interests
- Diagnose rather than accuse
- Bolster and affirm relationships
- Increase sense of personal integrity
- Increase mutual commitment to improving relationships
- Increase control over individuals' lives
- Gain experience in ways to de-escalate conflict

For a complete copy of the document titled *A Four Step Way of Dealing with Conflict* see <a href="http://www.va.gov/adr/fourstep.htm">http://www.va.gov/adr/fourstep.htm</a> or <a href="http://vaww.va.gov/adr/fourstep.htm">http://vaww.va.gov/adr/fourstep.htm</a>.



## **APPENDIX B:**

# VARIOUS TYPES OF ALTERNATIVE DISPUTE **RESOLUTION (ADR)**

**Conciliation** refers to building positive social relationships that are often a prerequisite for productive problem solving or negotiations. Conciliation by a neutral third party involves assisting parties in conflict to establish communication, clarify misperceptions, deal with strong emotions, and build the trust necessary for cooperative problem solving. Conciliators may accomplish the above goals by providing a neutral meeting place, carrying initial messages between and among the parties, reality testing regarding perceptions or misperceptions, and affirming the parties' abilities to work together. Conciliation is often practiced in tandem with procedural assistance such as coaching, training, facilitation or mediation.

**Facilitation** involves the assistance of an individual, who is impartial toward the issues or topics under discussion, in the design and conduct of a problem-solving meeting. The facilitator works with all of the meeting participants in a group session and provides procedural directions as to how the group can efficiently move through the problem-solving steps and arrive at a jointly agreed upon goal. A facilitator may be a member of one of the disputing groups, or may be outside the group, however, they must remain impartial as to the topics or issues under discussion and focus only on procedural assistance, or their value as a neutral will be lost. In general, facilitation is most applicable when:

- The intensity of the participant's emotions about the issues in dispute is low to moderate.
- The parties or issues are not extremely polarized.
- The parties have enough trust in each other that they can work together to develop a mutually acceptable solution.
- The parties are in a common predicament (such as an internal organizational problem) and they need, or will benefit from, a mostly acceptable outcome.

**Mediation** may be described as "guided negotiation." Mediation involves the assistance of a neutral third party to help principal disputants negotiate a mutually agreeable settlement. It is less formal and less structured than a "mini-trial". Negotiations between parties often break down for reasons which have little to do with whether a settlement might be mutually advantageous (such as antagonism between the parties and mutual distrust). A mediator attempts, through reviews and discussions with both parties and with the parties individually, to assist in negotiating a settlement. Please refer to Chapter 2 for a more in-depth discussion on mediation.



**Ombudsman** is an independent individual who serves as a confidential and informal information resource, communications channel, complaint-handler, dispute resolver, and a person who helps an organization work for change. Ombudsman programs can take some of the burden off traditional administrative dispute systems that are being used to handle inappropriate matters.

The ombudsman's purpose is to foster values and decent behavior - fairness, equity, justice, equality of opportunity, and respect. An organizational ombudsman is typically a neutral individual who has been designated to handle problems within an organization. The ombudsman is usually located outside the ordinary channels of management, answers directly to the organization's or facility's chief executive officer and has direct access to that official to cut through the "red tape" that often accompanies problems. Both the designation of neutrality and direct access to the chief executive officer help to preserve the independence and contribute to the effectiveness of the ombudsman.

Early Neutral Evaluation (ENE), also sometimes referred to as "fact-finding", involves using a neutral fact-finder, some are with substantive expertise, to evaluate the relative merits of each party's position. This process, which can be used early in the life of the dispute, usually involves an informal presentation to the neutral of the highlights of the party's cases or positions. Unless agreed to otherwise, the neutral fact-finder provides a nonbinding evaluation, or an advisory opinion, sometimes in writing, which can give parties a more objective perspective on the strengths and weaknesses of their cases. The intent of this process is to resolve disputed facts, thereby making further negotiations more likely to be productive. Unlike the neutral in an arbitration who considers only the evidence presented by the parties, the neutral fact-finder often plays a more active role in seeking out evidence that may not have been advanced by either side. Decisions of neutral fact-finders may, like decisions of other neutrals, be kept confidential. In some cases, however, the parties permit those findings to be admitted into evidence if the dispute continues to litigation.

ENE or fact-finding is used in a number of courts, including the U.S. District Court and the Departmental Appeals Board at HHS. ENE may be an appropriate process when some or all of the following characteristics are present in the dispute:

- The dispute involves technical or factual issues that lend themselves to expert evaluation.
- Parties disagree significantly about the value of their case.
- The top decision-makers of one or more parties need to be informed about the real strengths and weaknesses of the case.
- The parties are seeking an alternative to extensive discovery.



**Dispute Review Boards/Panels (DRB)** are entities that are put into place to help facilitate the processing of disputes. Their purpose is to permit the parties to obtain non-binding neutral evaluation of the merits of the disputes and their positions as the dispute arises. Use of DRBs is most prevalent in construction contracting. Most DRBs have three neutrals or members, individuals of some eminence who are selected by agreement of the facility or parties. The DRB usually designs the procedures to be followed. Members of the DRB gain familiarity with the parties and the situation. Generally, the technique uses the confidence that parties have in the DRB members to help the parties settle their differences and proceed amicably with resolving the dispute on the basis of the DRB evaluations.

**Settlement Judges** are the most popular non-binding ADR technique used to resolve procurement and contract disputes. They are often used in other administrative proceedings such as the EEOC and the Merit Systems Protection Board (MSPB). Judges serve essentially as mediators or neutral evaluators in pending cases. The settlement judge is usually a judge from the same body as the judge (or panel) who will ultimately make the decision if the parties do not resolve the case. The settlement judge hears an abbreviated presentation of the case and then evaluates its strengths and weaknesses in discussions with the parties (either together or separately depending on the desires of the parties.) The settlement judge may also render an advisory opinion. The use of settlement judges rests on the premise that "settlement can be fostered by a frank, in-depth discussion of the strengths and weaknesses of each party's case before a neutral advisor." Use of a judge other than the presiding judge in settlement discussions permits the parties to obtain this benefit without jeopardizing their ability to obtain an "impartial" resolution of their case by the presiding judge should settlement not be reached. The perceived advantage of this approach is the opportunity to gain authoritative advice as to how the case might be decided in the settlement judge's court or board. The apparent shortcoming of this ADR method is that the settlement judge's opinion or advice may be based on something less (or more) than the information that would emerge during the actual hearing.

Mini-trials are not really trials. They are a process in which the disputants present their cases in a highly abbreviated version (usually no more than a few hours or few days) to the senior official who has the authority to settle the dispute. This process allows those in senior positions to see, first hand, how their case and that of the other party plays out, and can serve as a basis for more fruitful negotiations. Often, a neutral presides over the hearing, and may subsequently mediate the dispute or help parties evaluate their cases. The procedures for mini-trials are developed by agreement among the parties, with the procedures for each mini-trial being designed to meet the needs of the individual case. Mini-trials should not be confused with the settlement judge techniques in which the parties present their cases to a settlement judge. In "true"



mini-trials, the parties present their cases not only to a neutral advisor, but also to the principals themselves. The principals, using the assistance of a neutral advisor to the extent they deem it necessary to do so, generally commence settlement negotiations immediately after the mini-trial presentation concludes.

Arbitration is a relatively formal process, in which parties jointly select the decision maker(s), to whom they turn over the decision-making. Depending on the agreement of the parties and situation, an arbitrator's decision may be binding or non-binding. This is the ADR technique that most closely resembles formal litigation. To date, VA and most federal agencies have not sought to use binding arbitration as an ADR technique. In arbitration, an arbitrator, after receiving evidence and hearing each side's case, following procedures agreed on in advance by the parties, issues a decision much like a judge issues a decision. The parties may limit time-consuming pretrial procedures, such as discovery, thereby resolving cases more quickly. The arbitrator's decision is often more abbreviated than a traditional judicial decision, and arbitrators can issue awards with only minimal explanation of their rationale, substantially reducing the time between hearing and decision. Nonbinding arbitration involves the same procedure as binding arbitration except that the decision rendered by the arbitrator is advisory only and can be disregarded by the parties.

## **APPENDIX C**

# OVERVIEW OF FEDERAL AND VA ADR STATUTES, POLICIES, DIRECTIVES AND INITIATIVES

There are several statutes, regulations and policies that weave together to create federal ADR policy. To further confuse matters, each federal agency also has its own ADR policies. Set forth below is some basic information on federal and VA ADR guidelines, including key ADR statutes, regulations, policies and initiatives.

# 1. Federal Government-wide ADR Statutes, Regulations, Policies and Initiatives.

The Administrative Dispute Resolution Act of 1996, 5 U.S.C. §§ 571-584 (ADRA 1996), requires each federal department to "[a]dopt a policy that addresses the use of alternative means of dispute resolution and management." A complete copy of ADRA 1996 can be found at

http://www.finacenet.gov/financenet/fed/iadrwg/adra.pdf. Very useful guidance on ADRA 1996 can be found in an article, The Administrative Dispute Resolution Act of 1996, What You Need to Know to Make it Work for You (Spring 1997) at <a href="https://www.adr.af.mil/afadr/library/usaf/adra/adra/adra/6tc.html">www.adr.af.mil/afadr/library/usaf/adra/adra/adra/6tc.html</a>.

Presidential Memorandum of May 1, 1998 directed that each federal agency must take steps to "promote greater use of mediation, arbitration, early neutral evaluation, agency ombudsman, and other alternative dispute resolution techniques." A copy of the Memorandum is at <a href="https://www.npr.gov/library/direct/memos/dispute.html">www.npr.gov/library/direct/memos/dispute.html</a>.

The Interagency Alternative Dispute Resolution Working Group (IADRWG) was created by Presidential Memorandum on May 1, 1998, "to facilitate and encourage agency use of alternative means of dispute resolution." The Attorney General chairs the IADRWG in which representatives from VA have participated. Various IADRWG subcommittees focus on helping agencies establish ADR programs in the workplace, and resolve contract disputes and claims against the government arenas. VA's Dispute Resolution Specialist represents VA on the IADRWG Steering Committee. The IADRWG website contains a wealth of information on ADR, including national efforts, other federal agencies' programs, and links to federal agency and private ADR websites. Specific information about the Workplace Section of the IADRWG can be found at <a href="https://www.financenet.gov/financenet/fed/iadrwg/workplace.htm">www.financenet.gov/financenet/fed/iadrwg/workplace.htm</a>. Information about



the IADRWG and its subcommittees can be found on the IADRWG's website at <a href="https://www.financenet.gov/iadrwg.htm">www.financenet.gov/iadrwg.htm</a>.

**EEOC Regulations** were issued on July 12, 1999, amending federal sector complaint processing regulations contained at 29 CFR 1614, and requiring all agencies to "[e]stablish or make available an alternative dispute resolution program," for both the pre-complaint and formal complaint processes. (64 Fed. Reg. 37643-37661,1999). Agencies are required to develop ADR programs that comply with the core principles set forth in EEOC's policy statement on ADR, contained in EEOC Management Directive 110, in place by January 1, 2000. The EEOC regulations and ADR guidance can be found at:

http://www.eeoc.gov/federal/1614-new.html and http://www.eeoc.gov/federal/1614-qanda.html.

# 2. VA ADR Statutes, Regulations, Policies and Initiatives.

**VA Directive 5978.** VA Directive 5978, Alternative Dispute Resolution, was issued on February 23, 2000 to establish Department-wide ADR policy, and directs that:

- ADR/mediation is to be used to the maximum extent practicable, in an appropriate and cost-effective manner, and at the lowest organizational level;
- VA Administrations and staff offices will set goals for ADR use and provide the appropriate resources to accomplish their ADR goals;
- the ADR/mediation option will be offered to employees at all facilities for any workplace dispute;
- every VA employee will receive appropriate instruction on ADR/Mediation and the ADR/Mediation program(s) available to them; and
- all VA ADR/Mediation programs will be collaboratively developed and implemented with Labor partners to ensure wide acceptability to potential users.

VA Directive 5978 requires that each Administration and staff office appoint an ADR Coordinator, to have responsibility for that organization's ADR activities, and that position descriptions be modified to reflect ADR responsibilities. The Directive also orders that a permanent VA-ADR Steering Committee be established to serve in a centralized clearing house capacity to promote a One-VA approach and sharing of information and resources among Administrations and staff offices. The Directive places the responsibility for ADR program implementation and resource allocation with the Administrations and staff offices that have day-to-day needs and applications for ADR. The Directive requires the development of survey instruments, data bases/information systems, and other



instruments to meet VA FY 1998-2003 Strategic Plan guidelines and to assess performance of ADR programs (to include cost and user satisfaction).

Section 3, General Goal 10, VA Strategic Plan FY 1998-2003 (Alternative Dispute Resolution), currently under revision, requires VA to: "Conserve VA resources by increasing the use of Alternate Dispute Resolution techniques." The objective is to resolve contractual, labor management and discrimination disputes "more quickly and at less cost." The key strategies include: (a) making ADR information and resources available to all facilities; (b) increasing the use of ADR in contract and work place disputes; and (c) conducting ADR program assessments to measure resource savings, user satisfaction and program improvements. The most challenging performance goal will be to "increase the number of disputes in which ADR is elected by 20 percent each year." The Strategic Plan sets forth two immediate tasks for VA. First, it must develop baseline data on current dispute resolution systems (to include cost and user satisfaction data), develop a system to collect data on ADR programs, and develop baseline data on ADR programs. Second, it will be necessary to assess ADR training needs, develop a training curriculum, distribute training information, and provide training to each VA facility and organizational element.

VA Directive 7433.3 and VA Handbook 7433.3, sets forth the policy and procedure for the VA Contracting Alternative Dispute Resolution (ADR) Program. This program encourages contractors and contracting officers, who have pre- and post-appeal contract disputes, claims, or issues in controversy, to use ADR procedures to help them resolve their problems. This program supplies a VA Board of Contract Appeals (VABCA) judge or hearing examiner to serve as a neutral to help the contractor and contracting officer resolve contract controversies. The Board neutral assists the parties in deciding what type of ADR method will work best for them, and will work with the contractor and contracting officer to ensure they are satisfied with the ADR process selected. VA Directive 7433.4 (November 24, 1998) and VA Handbook 7433.4(November 24, 1998) containing the policy and guidelines for this program can be found at <a href="http://www.va.gov/oa&mm/policy/7433-3d.htm">http://www.va.gov/oa&mm/policy/7433-3d.htm</a> and <a href="http://www.va.gov/oa&mm/policy/7433-3h.htm">http://www.va.gov/oa&mm/policy/7433-3h.htm</a>, respectively.

OGC Directive 8001 and its accompanying Handbook, Alternative Dispute Resolution Program for the Office of General Counsel (December 1999) sets forth the policy of the Office of General Counsel concerning the use of alternative dispute resolution processes and can be found at http://www.va.gov/adr/ocgdir.htm. Pursuant to this policy the 23 Regional Counsel Offices have each appointed at least one staff attorney to specialize in ADR. These attorneys are part of a network of ADR counsels that have received advanced ADR and mediation training (at least 80 hours). The OGC ADR attorneys are capable of providing support and guidance in developing and administering mediation programs. They have the capability to answer questions, and provide materials and local training. They also have several local and



national contacts to help facilities obtain other types of ADR/mediation training. These ADR attorneys are committed to assisting facilities in implementing local and VISN-wide ADR and mediation programs. Information about these attorneys can be found at www.va.gov/adr/index.html and vaww.va.gov/adr/index.htm.

VA NPC Statement Endorsing ADR Efforts. On November 2, 1999, the VA National Partnership Council issued a statement endorsing local ADR efforts and encouraging future actions to create and foster ADR programs throughout the Department of Veterans Affairs. The Statement can be found at http://vaww.va.gov/ohrm/Partners.htm.

**VA National Partnership Agreement** requires that "[t]he partners at all levels will develop plans to implement alternative dispute resolution systems that emphasize and promote the voluntary resolution of conflict based on an interestbased approach." Article 6, section 4.C of the AFGE/VA National Contract requires that "[t]he parties at all levels shall jointly adopt an ADR problemsolving method that will include mutually agreed upon third parties." The Agreement can be found at vaww.va.gov/ohrm/Partners.htm#Agreement. Other news about the VANPC can be found at http://vaww.va.gov/ohrm/Partners.htm.

VA/AFGE National Master Agreement, Article 6, discusses VA's and AFGE's commitment to and support of the use of Alternative Dispute Resolution (ADR) as a way to resolve disputes. Article 6 of the Master Agreement can be viewed at http://www.geocities.com/CapitolHill/7106/6.htm. On April 27, 1998, Alma L. Lee, President, NVAC, issued guidance to AFGE Local Presidents on the development and implementation of local ADR programs. She wrote: "mediation makes good business sense for all of us. Many innovative VA and union leaders realize this and have already begun local mediation programs at their facilities. I believe more good results will follow. I urge each of you to seriously consider helping initiate and support a local mediation program at your facility. I believe that local mediation programs can make a difference in how VA does business and become an "employer of choice."" The full text of this letter and attached guidance, AFGE National ADR Program Checklist, can be found at www.va.gov/adr/afgeguid.html.

VA/NFFE National Master Agreement, Article 6, discusses VA's and NFFE's commitment to ADR and provides that "the parties will negotiate ADR procedures locally."

Veterans Health Administration ADR Steering Committee (VHA ADR Steering Committee) was established on May 14, 1999, by the Chief Network Officer (CNO). The Committee, chaired by Timothy May, CHE, Medical Center Director, W.G. (Bill) Hefner VA Medical Center, was charged with developing a proposal for the establishment and implementation of a comprehensive and effective VHA ADR Program. The VHA ADR Steering Committee was also tasked by the CNO with taking steps to ensure that all medical centers have



operating mediation programs in their facilities by September 30, 2000 (FY 2001).

The CNO's ADR vision was set forth in four charges to the VHA ADR Steering Committee:

- Charge 1. Conduct an inventory of all field facilities to determine the presence or absence of ADR methodologies for conflict resolution. Findings from this inventory will establish a baseline for program implementation.
- Charge 2. Study existing programs both inside and outside VA to determine "best practices" and "lessons learned."
- Charge 3. Design an ADR program suitable for VHA that will provide the necessary foundation for establishing ADR as an effective tool for management officials as well as for employees throughout VHA.
- Charge 4. Once the program design has been approved, oversee the implementation, devising strategies that will ensure its success.

The group's primary focus has been to devise strategies and methodologies for instituting mediation programs in all VHA local facilities. The group has surveyed VISN directors to determine what mediation activities are currently in place and what resources are yet needed to assist in ensuring that all facilities offer mediation as an alternative choice for conflict resolution. Following successful mediation implementation, the group will begin to focus on facilitating the implementation of other types of ADR VHA-wide. For more information on the Committee's plan of action and activities, contact Nancy Martino via Microsoft Exchange or at (704) 638-9000, x2473.

VA Office of Resolution Management (ORM) has, over the past six months, been developing the ORM Mediation Program by working collaboratively with various VA organizations, administrations, local facilities, and labor. ORM's Mediation Program is expected to be a critical element and play a major role in the Department's EEO dispute resolution system. ORM intends to rely strongly on local facility mediation programs as a primary source of mediators. For a copy of the ORM Mediation Program and list of ORM ADR Liaisons, check the VA's ADR Internet site at <a href="http://www.va.gov/adr/index.htm">http://www.va.gov/adr/index.htm</a> and its Intranet site at <a href="http://www.va.gov/adr/index.htm">http://www.va.gov/adr/index.htm</a>.

ORM field offices have been instructed to work with local facility ADR coordinators to fashion mediation programs for their geographic servicing area. These programs should be tailored to meet the needs of the facilities serviced, to enhance communication between the various participants, and maximize the available ADR resources. ORM is continuing its mediation efforts with full program implementation expected by July 2000. Refer to ORM's web site and VA's ADR web site, <a href="www.va.gov/adr.htm">www.va.gov/adr.htm</a> for future information and updates on ORM's Mediation Program.



VA Figures on Cost, Time and Other Savings between using the traditional EEO processes versus the mediation process are set forth at <a href="https://www.financenet.gov/financenet/fed/iadrwg/vaeval.pdf">www.financenet.gov/financenet/fed/iadrwg/vaeval.pdf</a>.

Current as of: October 19, 1999



# **APPENDIX D:**

# WHEN TO USE AND NOT USE MEDIATION

#### Mediation works particularly well when:

- There is a continuing relationship that the parties want to preserve.
- A long court case would adversely impact morale and productivity.
- Confidentiality is important. Since there is no public record, the parties can agree that the results are confidential.
- The parties have time and expense concerns-mediation will be more efficient.
- There is a lot of distrust and a neutral third party can help overcome perceived slights and rebuild lines of communication.
- The parties want to keep the dispute confidential and not air their "dirty laundry" in public.
- The parties believe that getting some assistance communicating and negotiating will help resolve the situation.
- There is a need for creative solutions and realistic assessments.
- The parties want to control the solutions and reach mutually satisfactory solutions.
- There are concerns about future litigation and repetitive claims.
- There are no novel legal issues or a desire to make case law.
- The cost of litigation is likely to exceed the value of the dispute.
- Involves a matter to which there is no legal entitlement.
- Neither party's case is a clear winner.

#### Mediation may be inappropriate when:

- There is important case law that needs to be established, or conflicting decisions need to be clarified to establish the law to be applied to future cases.
- The decision-maker for one or both of the parties will not attend the mediation session.



- A party cannot effectively represent his or her best interests and is not represented at the mediation session.
- A person who is important to the mediation session is not able to be present or reached.
- There is a threat of criminal action.
- One party wants to delay a resolution.
- Discovery is needed.
- One of the parties will not negotiate in good faith or only wants to use mediation as a stalling technique.
- A case involves governmental and/or political issues.
- Budgetary constraints may obstruct settlement.

## **APPENDIX E:**

# COMMON QUESTIONS AND ANSWERS ABOUT MEDIATION

#### What is mediation?

Mediation is an informal way individuals can resolve disputes with a fellow employee, a manager or a colleague. In mediation, a mediator helps two or more persons explore ways to resolve their differences and reach an agreement that best addresses their interests.

#### In what kind of cases can mediation be used?

Mediation can be used in many areas in the workplace. To date, mediation has been widely used in EEO, contract and MSPB cases. However, it is also extremely effective in resolving informal workplace disputes. The Administrative Dispute Resolution Act directs agencies to explore potential mediation application in both formal and informal adjudication, rulemaking, enforcement actions, issuing and revoking licenses or permits, contract administration, litigation brought by or against the agency and any other agency actions.

## Is mediation just another "fad"?

No. Mediation is here to stay. It is being extensively used in the federal government as well as in the private sector. The techniques used have been so successful that there is a steady and rapid growth of the use of mediation in almost all sectors of dispute resolution.

## Just exactly how does the procedure work?

The mediator usually holds a series of joint and separate sessions with the parties in order to clarify the issues in dispute and help generate settlement options. Through this series of meetings, the parties clarify their needs and realistically assess their alternatives to reaching settlement.

#### Who is a mediator and what is their role?

A mediator is a neutral party who has no interest in the outcome of the dispute. He/she has received special training in techniques designed to assist the parties in



reaching a resolution. The mediator does not have the power to decide the dispute; the parties develop a resolution themselves with the assistance of the mediator. The mediator does, when appropriate, suggest possible courses of action, introduce fresh ideas to problem solving and play the role of a "sounding board" for settlement ideas. The mediator brings independence, momentum and a safe environment in which to problem solve. Mediators are selected based on their ability to be fair and impartial while assisting the parties in focusing their issues and reaching an agreement.

## What should I expect at a mediation session?

While the format for mediation sessions can vary greatly depending on the issues and individuals, most sessions will progress through some basic stages. These stages include a general introduction stage, a story-telling stage, a problem solving stage, and a resolution or agreement stage. It is the role of the mediator to guide the parties through each of the stages or to determine if alternate courses of action would be more appropriate.

Each party should come to a mediation with the following expectations:

- Be willing to settle the dispute.
- Be open-minded and willing to explore options.
- Be prepared to listen to the other party and to attempt to understand the other party's position.
- Be prepared to briefly discuss the facts of the case and what each party wants to accomplish.
- Each party will have the opportunity to voice concerns and to speak without interruption.
- Be prepared to share information with the mediator, focusing on your needs and interests.
- Be prepared to negotiate and bargain in good faith.

## Are employees required to go to mediation?

No. The process is entirely voluntary and does not interfere with the employees' right to turn to other means of resolving their dispute. Both parties to a dispute must agree to go to mediation before the process can take place.

# What happens if mediation does not result in a resolution?

If both parties to a dispute agree to go through the mediation process, but cannot reach an agreement, the traditional methods of resolving disputes are still available, provided the party meets any required time limits for filing the dispute. Neither party gives up his or her right to pursue a dispute formally. No one can force the parties to make a decision or reach an agreement. The parties can stop the mediation process at any time.

## Who can be at the table during mediation?

Parties can represent themselves or have a representative with them. Bargaining unit members will have a union representative present. One or more mediators will also be present.

# How long does mediation typically take?

The length of mediation depends upon the complexity of the issues and the willingness of the parties to resolve the dispute. Some mediations may last less than an hour while others may require multiple days or meetings. Generally, workplace related disputes take from 2 to 8 hours to resolve. In almost all cases, the informality and focus of the mediation process helps parties resolve the issues in a much shorter time than traditional litigation. Naturally, the time it takes to set up and complete a mediation depends on the program, the complexity of the problem and the availability of the mediator and the parties.

#### Is mediation confidential?

All information presented and discussed at a mediation is considered confidential, including the information shared with a mediator in a private session with only one party, called a "caucus". Mediation proceedings are "private," and not open to the public. A mediator will not discuss private conversations with other parties or persons who are not participating in the mediation. Mediators do not prepare or submit reports on the substance of the dispute or the issues discussed during the mediation. However, some statistical reporting on user satisfaction may be appropriate. By signing an Agreement to Mediate, the parties agree that if the matter is not settled the mediator can not be used by either party as a witness in future actions.



# What happens if a dispute is resolved through mediation?

Usually a settlement agreement is drafted and signed by the parties. The agreement is binding and enforceable to the same extent as any other agreement or contract.

# What happens if a dispute is not resolved through mediation?

The parties can continue with the traditional litigation process provided they have followed the statutory time frames, for example, those timeframes that apply to the discrimination complaint process or negotiated grievance procedures. In addition, mediation typically does not affect or delay any schedule, discovery, or trial calendar for a court case unless the parties agree otherwise and the court so orders.

## **APPENDIX F:**

# AN OVERVIEW OF THE MEDIATION PROCESS

#### Step One - Preparation:

**Goal:** Set expectations before parties arrive at the table.

#### **Function:**

- Make initial contacts.
- Arrange the physical space.

**Mediator's Role:** The mediator will begin building trust and will establish professional credibility.

#### Step Two - Introduction:

Goal: Explain roles and set a positive tone.

#### **Function:**

- Greet the parties and assign them specific seats.
- Identify yourself and the parties.
- Establish an informal relaxed atmosphere.
- Explain mediation and ascertain their willingness to participate.
- Clarify ground rules and explain the reason for them.
- Assess the parties. Are both ready to begin?
- Have parties sign an agreement to mediate.

**Mediator's Role:** The mediator will give an overview of the process. She/he will establish trust. The mediator will set a positive tone for the session and show fairness and neutrality.

## Step Three – Storytelling:

Goal: Parties describe their stories and define issues.



#### **Function:**

- Joint Sessions: parties discuss and listen to each other's concerns, issues, and vent emotions.
- Caucus Sessions: the mediator meets with the parties separately to explore their concerns, issues, view of reality, options.

**Mediator's Role:** The mediator will listen carefully to all parties. She/he will question, probe and clarify any statements that are unclear. The mediator will then summarize the stories given.

#### Step Four – Problem-Solving:

**Goal:** Explore promising options.

#### **Function:**

- Define key issues.
- Identify common ground.
- Negotiate issues.
- Focus on interests, not positions.
- Generate and explore many promising options for resolution.
- Establish criteria for selecting acceptable solutions.
- Work through impasse.

**Mediator's Role:** The mediator will encourage creativity.

# Step Five – Agreement:

**Goal:** Document and ratify the solution.

#### **Function:**

- Identify areas of agreement.
- Agree on principles and then on details if possible.
- Prepare and sign (if appropriate) a written agreement.
- Implement the agreement

**Mediator's Role:** The mediator will summarize and prepare draft agreement.



## **APPENDIX G:**

# CORE PRINCIPLES FOR NON-BINDING FEDERAL WORKPLACE ADR/MEDIATION **PROGRAMS**

- 1. Confidentiality: All ADR processes should assure confidentiality consistent with the provisions in the ADR Act of 1996. As such, designated neutrals should not discuss, nor should they be asked to reveal, confidential communications, comment on the merits of the case outside the ADR process, or make recommendations about the case to management not parties to the process or agency staff such as EEO counselors, Employee and Labor Relations personnel, or Human Resources staff. Limited disclosure is permissible to nonparties who need to know information to authorize and/or implement the settlement agreement. Parties to the dispute should be notified before beginning the ADR process that disclosure for these purposes may be necessary.
- 2. Neutrality: Those who function as neutrals such as mediators, fact-finders and arbitrators, should fully disclose any conflict of interest, should not have a stake in the outcome of the dispute, and should not be involved in the administrative processing or litigation of the dispute (e.g., counseling, investigation).
- **3. Ethics:** Neutrals should follow the professional guidelines applicable to the type of ADR they are practicing.
- **4. Fairness:** Participants in an ADR process should not have to give up any due process rights as a condition to using ADR. In this regard, participants in an ADR process must retain their right to have their claim adjudicated if a mutually acceptable resolution is not achieved.
- **5. Voluntariness:** Employees' participation in the process should be voluntary. In order for participants to make informed choices, they should be given appropriate information and guidance to decide whether and how to use ADR processes effectively.
- **6. Self-determination:** ADR processes should provide participants an opportunity to make informed and voluntary decisions. Participants to an ADR process should have the right to reject a specific neutral and have another selected acceptable to all parties.
- **7. Representation:** All parties participating in an ADR process should have a right to be accompanied by a representative of their choice, consistent with



applicable collective bargaining agreements and/or other statutory or regulatory mandates.

- **8. Timing:** Use of ADR processes should be encouraged at the earliest possible time and the lowest possible level within the organization.
- **9. Quality:** Agencies should establish standards for training neutrals and maintaining professional capabilities.
- 10. Coordination of Functions: The goal of an agency should be to develop an effective integrated conflict management system for workplace disputes which would coordinate, evaluate, and ultimately improve existing and future ADR programs. At the very least, coordination of ADR processes is essential among all agency offices and entities with responsibility for resolution of workplace disputes. These offices and entities may include, but are not limited to Human Resources, EEO, agency Dispute Resolution Specialists, Unions, Partnership Councils, Ombuds, Labor and Employee Relations, Inspectors General, Administrative Grievance, Counsel, and Employee Assistance.

# Appendix G

## **APPENDIX H:**

# STATEMENT FROM VA NATIONAL PARTNERSHIP COUNCIL ENDORSING ADR EFFORTS IN THE DEPARTMENT OF **VETERANS AFFAIRS**

The VA National Partnership Council supports local initiatives to design and implement VA ADR programs in partnership. Members of the VA National Partnership Council also take this opportunity to endorse these efforts and encourage future action in partnership principles, to create and foster ADR programs throughout the Department of Veterans Affairs.

Dated: November 2.1999

This agreement was signed by the following Members of the VA National Partnership Council (for a copy of the original document with signatures, please see your station's hardcopy of this document).

#### Ronald E. Cowles

Deputy Assistant Secretary for Human Resources Management (Management Co-Chair)

#### J. David Cox, R.N.

Vice President, AFGE National VA Council (Union Co-Chair)

#### Ann Adams-Converso, R.N.

Chairperson New York State Nurses Association

#### Vincent L. Barile

Director, Office of Operations Support National Cemetery Administration

#### Alma L. Lee

President, AFGE National Council

#### JoAnne K. Carr, R.N., M.S.N.

Associate Medical Center Director for Patient Care Services VA Medical Center, Augusta, GA

#### Kenneth J. Clark

Chief Network Officer Veterans Health Administration

#### Walter A. Hall

**Assistant General Counsel** Professional Staff Group III

#### James S. Jones

Director VA Medical Center, Danville, IL

#### Susanne J. Pooler

National Vice-President, NAGE



Rhonda D. Glover

President, SEIU Local 551

Frederick L. Malphurs Network Director, VISN 2

**Pamela J. Nicastro** SEIU Local 200 C

**Lorraine T. Payton**President, NFFE VA Council

**Ellen M. Pitts**President, NAGE Local R1-187

Susette C. Putman

Senior Labor Coordinator, American Nurses Association

Joseph C. Simon

Region 4 Vice President NFFE VA Council

**Michael Walcoff** 

Deputy Under Secretary for Operations

Veterans Benefits Administration

Veronica L. Wales

Human Resources Manager Veterans Benefits Administration

Julius Williams, Jr

Director, Vocational Rehabilitation & Counseling Services

Veterans Benefits Administration

# **APPENDIX I:**

# **SAMPLE** MEMORANDUM OF UNDERSTANDING

#### Minneapolis VA Medical Center

This memorandum of understanding between the Department of Veterans Affairs, VA Medical Center, Minneapolis, and the American Federation of Government Employees, Locals 3669 and 1969 and IAFF-168, is for the purpose of establishing a Mediation Program applicable to represented employees.

#### A. Definitions:

- **Represented employees:** Employees who are members of the bargaining unit or professional unit represented by AFGE Locals 3669 and 1969 and IAFF-168.
- Human Resources Management Service HRMS:
- **Representative:** A person appointed by AFGE Local 3669, 1969 and/or IAFF-168.
- MOU: Memorandum of Understanding between AFGE and IAFF Locals and the Department of Veterans Affairs.
- **Advisor:** An individual who can provide consultation during mediation. This may be an HRMS staff person, union representative, EEO specialist, or other individual.
- **Consensus** is defined as "Whether or not we prefer this decision individually, we support it because it was reached fairly and openly, and it is the best solution for all of us at this time."
- Day or Days means calendar days.

#### B. Mediation:

Mediators will be selected by agreement of the Partnership Council from a list of volunteers who will then be trained as mediators. Any employee may volunteer for such service. Training will be provided in mediation techniques, and labor-relations, sufficient to insure that mediators are competent for this



purpose. Mediators will not be assigned cases until trained. Additional training to enhance mediators' capabilities will be made available as needs and resources permit. Any employee or supervisor may request mediation within 30 calendar days of the occurrence requiring dispute resolution. Consent of both employees is required for the process to proceed. The HRMS Coordinator will maintain a list of mediators available to provide assistance. HRMS will provide to the employee a list of mediators (none from the service or division involved). The employee will then be given the option to pick the mediator he or she desires from the list provided. During the first year of this agreement, teams of mediators may be used and co-mediators may be assigned to each case until this provision is removed by the Partnership Council.

- **Mediation is voluntary.** The mediator(s) will facilitate discussions regarding issues and review the allegations, data, or physical information. The outcome of the mediation will either be agreement, withdrawal of the request by the employee, referral of the issue to the formal grievance procedure, or other avenues (MSPB, EEO). Once a mediator is requested, time limits applicable in the AFGE/VA Master Agreement or any Supplemental Agreement or MOU or other directives and regulations are expressly waived until a written notice or agreement is given to all parties by the mediator. Statutory time limits cannot be waived. If agreeable to all parties, a written agreement will specify the conclusion and consensus of the parties and will be consistent with the negotiated agreement (AFGE/VA Master Agreement) and will also be signed by the parties to the mediation. If no agreement is reached, the mediator will furnish a statement to that effect to each party and HRMS. Mediation agreements will be maintained by the HRMS Employee Relations Coordinator for no more than two years and will be destroyed thereafter. These documents shall not be used for any purpose other than stated in this agreement and may not be maintained in any other folder, format, or system of records. The mediator will contact the concerned parties immediately and attempt to meet within one week of the request for mediation. A finding will be issued within 15 calendar days of the final mediation meeting, unless there are emergent reasons for extending the deadline. Management will expressly authorize supervisors and managers as parties to the mediation to have full authority to reach an agreement within the scope of their resources on the specific issues under mediation. Likewise, the union agrees to accept any mediated agreement reached between the employee and management as long as it follows contract guidelines. Statistical data will be collected by the Mediation Coordinator without participant identification.
- **Union and management expressly agree:** Proceedings before the mediator will be informal and the rules of evidence do not apply. No record, stenographic, or tape recording of the meetings will be made. The agency and the union agree that the mediator's notes are confidential and their content

shall not be revealed. The agency and the union agree to the mediator's confidentiality and immunity from providing testimony in any subsequent arbitration case, court proceeding, investigation, or administrative tribunal shall be absolute. The parties further agree that the code of conduct for mediators attached to this agreement embodies the principles intended for mediators and the mediation process. Violations, or the appearance of violations, of this code of conduct will be grounds for removal of the mediator from the panel, which will be the sole action which may be taken against any mediator for behavior while acting as a mediator. Such determinations will be made by the Partnership Council, which will make recommendations to the Medical Center Director.

# C. Time and Training:

- All Mediators will receive appropriate and equal training before participation in the mediation program. While it is strictly the decision of management and the union as to who will be recommended for training as mediators, the final decision regarding training will be made by the Facility Director.
- Participation in mediation as a mediator, representative, employee, or supervisor will be authorized as "on duty status". Supervisors will make employees reasonably available to participate at any level. Where time conflicts occur due to workload, reasonable rescheduling will be the responsibility of the supervisor and mediator. No employee will be adversely impacted due to participation in the program either as an appellant, mediator, or panel member.

#### D. Communications:

Signature for Management

•	Details of this program will be communicated to all employees. In
	addition, a copy of this Agreement or summary of the details of the
	Agreement will be furnished to employees upon request and automatically
	upon an employee's request for mediation. With the approval of managemen
	and the union, these services may be provided to other federal or state
	agencies and requestors.

Signature for the Union(s) Date

Date

# APPENDIX J: SAMPLE

# LABOR/MANAGEMENT ALTERNATIVE DISPUTE RESOLUTION AGREEMENT

#### VA Healthcare System of Ohio

The VA Healthcare System of Ohio and The American Federation of Government Employees (AFGE), Locals 31, 1631, 2031, and 2209, and Service Employees International Union, Local 1199-H enter into this Alternative Dispute Resolution (ADR) agreement in the spirit of Executive Order 12871.

- **1. PURPOSE**. To use ADR to promote principles and practices that will contribute to an improved working relationship. This process will demonstrate a commitment to a positive approach and joint ownership of concerns and solutions. It is intended to resolve disputes quickly and informally. While this agreement is intended to assist in resolving issues between management and bargaining unit employees, the principles may be applied in other disputes among employees.
- **2. OBJECTIVES**. In order to achieve this purpose, the parties agree to the following objectives.
- a. Use interest-based negotiating techniques to develop solutions and resolve issues at the lowest possible organizational level.
- b. Use the ADR process as an alternative to established formal processes, including the EEO process and the negotiated grievance procedure for issues where the parties believe local resolution is possible.
- **3. MEMBERSHIP**. Ad Hoc Groups, usually consisting of the employee concerned, an employee representative, a supervisor, a management support person, and a neutral ADR mediator(s), will normally make up the ADR task group. Others may be added as circumstances require.
- **4. OPERATIONS**. The Network Human Resources Council will oversee the ADR program. After a Network Partnership Council is formed, oversight of the program may be transferred to the Partnership Council. The ADR program will follow the general guidelines listed below:
- a. A possible grievance or other issues should be referred for ADR as soon as possible.
- b. The parties must mutually agree to:



- Use ADR as a means to resolve their dispute.
- Use either a mediator from their own facility or one from another VISN 10 facility.
- c. One party will contact Human Resources and request ADR. The request to Human Resources will fully describe the issues, why it is being grieved, and the corrective action desired. The request will also verify that both parties are agreeable to ADR. The negotiated grievance process clock stops upon this referral.
- d. Prior to requesting a mediator, Human Resources will confirm that all parties agree to ADR, that all parties agree to either a local mediator or a mediator from another VISN 10 facility, and that the issue being referred is appropriate for ADR. The procedure for notifying a mediator is as follows:
  - If using local mediators, Human Resources will follow locally established policy.
  - If using mediators from another VISN 10 facility, Human Resources will contact the Network office and advise them of the issues of the case and confirm the appropriateness for ADR. The Network office will, in turn, notify a mediator, or mediator team, as appropriate.
- e. The ADR Ad Hoc Group will meet as soon as possible.
- If using local mediators, the group will meet within five administrative days of the referral.
- If using mediators from another VISN 10 facility, the group will meet within 15 administrative days of the referral.
- f. Before the ADR meeting, the supervisor and employee representative will research the case, identify what the requests and needs are, and develop an approach to dispute resolution. At the ADR meeting, both will be prepared to present their case. The supervisor and employee (with employee representative) are encouraged to discuss the issue before the first meeting.
- g. At the first meeting, the ADR Agreement is signed, concerns are discussed, issues are formed, and possible solution approaches are found. There must be a mutual agreement if ADR is to continue.
- h. A second meeting, if necessary, will be held as soon as possible, but no later than five administrative days after the first meeting.
- i. At the second meeting, if issues are not resolved, and unless mutually agreed that another meeting would be beneficial, the grievance will advance to the second step of the negotiated grievance procedure. The ADR Ad Hoc Group meeting accomplishes the first-step-meeting requirement of the negotiated grievance procedure. The concerned supervisor will make the written first-

- step grievance response within five days. This will restart the clock for the grievance process.
- j. If the original employee representative or supervisor is not available throughout the process, substitutes will be made to ensure a timely process. Exceptions may be made by mutual consent.
- k. If management, the employee, and his/her representative reach an agreement, the agreement shall satisfy the grievance. Prior to the parties signing the agreement, the mediator will have the agreement reviewed by Human Resources for legal acceptability. Human Resources will ensure that this review preferably occurs immediately, and at a minimum, on the same day it was presented.
- 1. Settlement offers made during ADR efforts may not be used in grievances or arbitration.
- m. The supervisor will document settlements. Settlements will not serve as precedent for resolving any other complaints that have been filed or may be filed by the complainant or any other person.
  - 5. ISSUES TO BE REFERRED FOR ADR.
  - a. Issues normally referred to the negotiated grievance procedures, except adverse actions.
  - b. EEO complaints.
  - **6. COMMUNICATIONS**. The Human Resources Council will monitor the success of this program through a quarterly report that compares the number of successful resolutions to the number of mediations that take place. Members of the Human Resources Council will communicate their support for the ADR Program at their respective facilities.

This ADR agreement between AFGE, SEIU, and VISN 10 will remain in effect for one year. It may be extended or renegotiated for an additional year by mutual consent.

(Include needed signature blocks)

#### **APPENDIX K:**

#### **KEY PLAYERS AND THEIR SUGGESTED ROLES**

#### Role of the Medical Center Director:

The role of the Medical Center Director is to provide visible program support and oversight to program design, implementation and ongoing evaluation:

- Meet with labor partners to initiate development of ADR/mediation policies.
- Develop a Memorandum of Understanding with all partners.
- Educate and elicit support from stakeholders.
- Work with labor partners to jointly establish an ADR/Mediation working group.
- Appoint employees as members of the ADR/mediation working group and provide necessary management support and resources.
- Provide resources for program design and training.
- Develop medical center policies for program implementation.
- Review and act on recommendations made by the working group.
- Develop mechanisms for channeling appropriate disputes to mediation.
- Be a collaborator.
- Visibly participate in program marketing.

#### Role of Labor:

The role of labor is to provide visible program support and encourage member participation in the design, implementation and ongoing evaluation:

- Meet with top management to initiate development of ADR/mediation policies.
- Develop a Memorandum of Understanding with management.
- Agree to participate in the working group and design phase of the program.
- Serve as an advocate for the ADR/Mediation program.

- Participate in awareness training and provide recommendation regarding other types of training needs.
- Educate stewards in Mediation Advocacy.
- Visibly support the mediation program vocally and in writing.
- Develop a system for channeling appropriate disputes to mediation.
- Be a collaborator.
- Assist with program marketing.
- Develop a network of union leaders to provide support to mediators.
- Work collaboratively with program administrators to maintain accurate, meaningful statistics of case referrals.

#### Role of Mid-Level Management:

- Support working group by allowing staff to fully participate as group members.
- Become well-versed in mediation; attend training.
- Promote the program to employees.
- Learn conflict management techniques.
- Encourage conflict resolution at the earliest stage.
- Communicate conflicts within your service/area to the ADR Coordinator and enlist their assistance in conflict resolution.
- Discuss conflict with labor partners and enlist their assistance in conflict resolution.
- Support employees in resolving their conflicts.

## Role of the Local Facility EEO Program Manager/Office:

- Become well-versed in mediation.
- Serve on the working group, or work collaboratively with the group.
- Assist with training and awareness.
- Promote the program as an alternative to formal methods of dispute resolution.
- Develop a system for channeling appropriate disputes to mediation.



- Work collaboratively with Labor and Mediation to maintain accurate, meaningful statistics of case referrals.
- Participate in program marketing efforts and activities.

## Role of the ADR/Mediation Working Group (i.e. partnership council, medical center committee, etc.):

#### **Pre-Program Implementation Phase:**

- Assess status of ADR/Mediation activities within the facility.
- If program is in existence, determine what is the extent of its use, and how successful it is. Working group may need to renew efforts to resurrect program.
- If program is in existence and successful, continue as an advisory board to the Medical Center Director and ADR Coordinator, performing program evaluation and recommending improvements.
- Review sample programs already in existence to see if any are suitable for implementation and if not, follow steps outlined in handbook on designing, implementing and evaluating a program.

#### **Program Implementation Phase:**

- Establish program goals and objectives, remembering to set forth milestones for completion.
- Develop a program policy
- Network with other facilities to see what they have that you can use.
- Identify your source for mediators (i.e. local, shared, contract services).
- If local employees will serve as mediators, then develop your method for selecting mediators and the criteria you will use.
- Ensure that mediators receive appropriate Mediator Skills Training.
- Ensure that all employees receive awareness training.
- Develop a marketing plan.

#### **Program Follow-up Phase:**

- Identify elements of your program that will be evaluated.
- Determine how to perform your program evaluation.
- Develop methods and tools for program assessment.
- Develop a survey document that will gather and/or assess
  - program statistics
  - Customer satisfaction
  - **Effectiveness of Training**
  - Stakeholder awareness
- Develop mechanisms for providing ongoing feedback to the working group.
- Periodically revisit and re-define your overall program objectives.

#### Role of the Mediators:

- Participate only on a completely voluntary basis.
- Participate fully in all training provided.
- Be fair, neutral and impartial.
- Abide by the standards of conduct for mediators.
- Provide necessary data for reporting results in a timely manner.
- Maintain complete confidentiality.
- Provide recommendations to program administrators for improvements.
- Share "lessons learned" with network with other mediators.

#### Role of Participants:

- Participate only on a completely voluntary basis.
- Make sure you are the one with the ability or authority to resolve the dispute.
- Remain calm. Let the mediator(s) do his/her job in facilitating the process.
- Respect the other parties.
- Keep a professional decorum.
- Focus on your "needs" rather than your "demands".

- Remain open-minded to alternative ways to meet your needs.
- Abide by any resolution agreements.
- Maintain complete confidentiality.
- Encourage others to use mediation.

#### Role of Personal Representatives or Advocates:

- Participate only on a completely voluntary basis.
- Divulge any possible conflicts of interest prior to the mediation.
- Remain calm and keep a professional decorum.
- Respect the other parties.
- Encourage your party to fully participate in discussions.
- Try to take a secondary role to your party; they should be the main participants in the process.
- Assist in keeping parties focused on their needs and mutual interests.
- Remain open-minded to alternative ways of resolving the dispute.
- Abide by any resolution agreements.
- Maintain complete confidentiality.
- Encourage others to use mediation.

#### Role of the ADR/Mediation Coordinator(s):

(may vary depending on the authority granted)

- Serve only on a completely voluntary basis.
- Divulge any possible conflicts of interest.
- Serve as a "Champion" for the ADR/Mediation program
- Participate in all training and marketing activities.
- Provide information to employees, supervisors, and labor representatives regarding what to expect and procedures for participating.
- Ensure the appropriate parties are participating in the mediation process.
- Ensure that mediators are properly matched with the complexities of the disputes.
- Encourage parties to consider mediation.



- Develop or recommend mechanisms for channeling disputes into the mediation process.
- Provide regular feedback to the ADR/Mediation working group regarding ways to improve program implementation.
- Develop or recommend changes in procedures, forms, reports, training, etc.

#### **APPENDIX L:**

#### **USING EMPLOYEES AS MEDIATORS**

Many VHA facilities utilize a pool of locally selected and trained employees who have volunteered to serve as mediators on a collateral duty basis. While this is initially costly in terms of training, utilizing facility employees can provide great flexibility and timely responses to requests for mediation.

However, the selection process is critical to ensuring that the employees selected to perform mediation services are perceived by all facility employees as qualified, objective, and fair.

#### Selecting Employees to be Mediators

Most facilities that have decided to use employees as mediators have done so on a collateral duty basis. If the right employees are selected and sufficient numbers of mediators are trained, this method can be very effective.

The actual selection process used by a facility depends greatly on the desires, needs and culture of the organization and its employees. Many successful VA mediation programs utilize their Partnership Council or a joint labor-management mediation working group to develop and conduct the selection process. Others have successfully selected mediators via the merit promotion process. This method allows all interested employees to be considered and provides for a structured evaluation process. Other facilities have used a variety of established committees to develop and oversee the selection process.

Regardless of the selection process used, corroboration by both management and labor is critical to this process. Whether the parties utilize a nomination or volunteer method, those employees who are selected must be mutually agreed upon by both the parties. This will ensure that employees who receive mediation training are accepted by both parties as neutrals.

#### **Necessary Skills for Mediators**

A mediator's skills are both natural and acquired. To be an effective mediator, an individual should have most or all of the following qualities...

- good judgment
- communication skills
- poise
- tact

- patience
- tolerance
- honesty
- credibility



- trust
- respect
- sensitivity
- intuitiveness
- fairness
- open-mindedness
- creativeness

- calmness
- good listener
- organized
- neutral
- nonjudgmental
- professional

In addition to these general characteristics, employees should possess the following abilities:

Ability to persuade parties to work collaboratively

Ability to diffuse hostility

Ability to identify issues and focus on areas of agreement

Ability to respect confidentiality

Ability to maintain the trust of the parties

If one or both of the parties believe the mediator assigned to the case has a conflict of interest or is not acceptable, the mediator should be replaced with another. However, each party should remember that the mediator is not a decision maker. The mediator does not have the power to force a decision on either party. It is the parties who make the decision on whether to settle a matter.

#### Co-Mediators and When to Use Them

Co-mediators are mediators who work together to mediate a particular dispute. In some instances co-mediation is used in a mediation program that provides for more experienced mediators to train or mentor less experienced mediators. Other programs use the co-mediation model to give their mediators more opportunities to mediate, meet with parties separately, or provide more comprehensive coverage during the mediation session.

#### **Mediator Training and Development**

**Training:** All mediators should complete some type of classroom training that emphasizes experiential learning and includes both lecture and role-playing.



While there is no absolute minimum required, most facilities provided approximately 24 hours of this type of initial training. The following subjects should be included in the curriculum:

- Conflict theory and models of conflict resolution
- Mediation skills and techniques
- Communication skills
- Conflict management skills
- Interest-based problem solving techniques
- Negotiation skills
- Techniques for dealing with cultural and gender issues
- Techniques for balancing power
- Components of the mediation process (i.e. introduction, fact gathering, interest identification, problem solving, agreement building, etc.)
- Mediator standards of conduct

**Development:** All newly trained mediators should be provided a period of mentorship by a more experienced mediator before they independently conduct mediation sessions. While many mediators may be experienced counselors or facilitators, mediation of workplace disputes will present them with new challenges and situations they may not have encountered before. Assigning inexperienced mediators as co-mediators with those who are more experienced has been a very effective technique to develop the skills of new mediators. Other facilities have arranged for new mediators to "observe" mediation sessions (if the parties agree to this) prior to conducting them as co-mediators or alone.

Some mediation programs have encouraged the mediators to develop their own ongoing support network where they meet regularly to discuss concerns and ideas and share relevant information. While they do not discuss confidential information, they often discuss general problems encountered and techniques for dealing with difficult situations. New mediators are able to learn from the experiences of others.

#### **Mediator Qualifications**

Generally speaking, VHA mediators should have the following minimum requirements to be qualified to mediate:

- The mediator has successfully completed a 24 hour mediation skills course;
- The mediator has co-mediated at least three cases with a qualified neutral or has mediated five cases independently and received positive evaluations from a qualified trainer/evaluator and/or participants; and
- The mediator must be in good standing in the primary programs under which (s)he provides mediator services.
- The mediator must be familiar with appropriate EEO law and policy.

Co-mediators are encouraged to have completed the minimum training requirements listed above and to have been mentored by experienced mediators.

#### **Ethical Principles**

A VHA Mediation Program should adhere to certain core mediation principles and its employee mediators should follow professional guidelines for the practice of mediation. In addition to having personal principles and values that assist the mediator to act with integrity, VA mediators are expected to:

- Maintain the confidential setting of the mediation process.
- Ensure the decision to settle remains with the parties and they are not coerced into agreements involuntarily.
- Avoid legal advice or counsel to either party.
- Be impartial and not let bias for or against either side affect the conduct of the mediation.
- Disclose acquaintances and material past relationships to the parties before mediation commences and as soon as the relevance of the acquaintanceship or relationship is known.
- Facilitate parties' communications to the extent they will allow, but do no harm to any party or a party's litigation position.
- Remain neutral regarding the fairness of a particular settlement, provided the settlement satisfies both parties and each party is represented by counsel.
   Where one or both parties are not represented by counsel, and a mediator



suspects a possible illegality in the settlement, the mediator should discuss with the parties the option of obtaining legal review of the settlement.



## APPENDIX M: OPTIONS FOR OBTAINING MEDIATORS

VHA facilities may use a variety of sources to obtain mediator services and each facility must determine what source or combination of sources will work best for them. Various sources for mediators may include: VA employees (i.e. in the same or nearby facility, in the same Network, in another Administration with a local presence/office); other federal agencies (federal mediation programs within geographical proximity, "sharing" and/or "federal executive board sharing" programs); state, county or city government mediation programs; or private non-profit mediation contractors/providers.

Where and how a VHA facility obtains its mediators is critical to the success and effectiveness of its program. A mediator who is not trusted by all the parties will not be able to effectively serve in his or her capacity as a mediator. How people perceive the mediator is a crucial factor in protecting the integrity of the process without which the process may fail. Mediators should be readily available to the users.

Therefore, mediator selection should be a collaborative process with participation from both management and labor, with the individuals selected to serve as mediators jointly selected and acceptable to both parties.

In some instances, parties to a dispute do not feel comfortable with a mediator that they know personally or professionally. In other cases, people who have been seen around the facility, church or community may be unacceptable to a party even if there has been no direct interaction with that person. Several options are available as described below.

While using a local VHA employee is administratively easiest and usually most cost effective, when a local employee is not acceptable, a mediator can be brought from another VA facility, another federal agency, or from the private sector. By designing a program that includes various tiers of mediator resources, a facility can maintain the flexibility needed for an active and effective mediation program.

The basic concept of a shared neutrals program is that organizations "share" employees who are qualified to serve as neutrals. For example, an employee of one VA facility or agency may act as a mediator for a dispute in a second facility or agency. The second facility, in turn, would provide a similarly qualified employee to mediate a dispute in the first facility as needed. In each instance, the employer of record would continue to pay the mediator's salary, but the facility receiving the mediator's service would pay other expenses, such as travel. If



mediator services are shared between federal agencies, the arrangement is typically accomplished by written agreement. While the monetary benefits of using ADR may be judged in terms of costs avoided (early resolution of a dispute avoids costly litigation in formal processes including the courts), the avoidance of "up front costs" such as paying mediators' fees contributes to actual monetary savings once an agency decides to use ADR to resolve the dispute.

VA employees from other local VA facilities (within the same administration or from another administration) serve as mediators. "Sharing" mediators between VA facilities is one way of obtaining highly qualified mediators at a relatively low cost. This method also significantly reduces concern by participants that the mediators are neutral. Many VHA facilities within the same VISN are successfully sharing mediator services and the cost of training mediators. The sharing/exchange of mediator services is generally accomplished through a formal or informal sharing arrangement between the facilities or administrations.

VA employees from the Office of Resolution Management (ORM) serve as mediators for VA facilities The Office of Resolution Management (ORM) has worked collaboratively with various VA organizations, administrations, local facilities and labor partners to develop and refine ORM's Mediation Program. To view the complete text of ORM's Mediation Program check the VA's ADR Internet site at <a href="http://www.va.gov/adr/index.htm">http://www.va.gov/adr/index.htm</a> and <a href="http://www.va.gov/adr/index.htm">http://www.va.gov/adr/index.htm</a>.

ORM's program supports existing ADR programs within VA by supplementing, **not** replacing these programs, offers alternatives where local programs are not fully developed, and provides additional mediator resources. Relying strongly on local facility involvement in the mediation process, ORM considers local facility programs as a primary source of mediators. Depending on the preferences of the parties and the availability of mediators, other sources for mediators will be considered. Other possible sources include other VA mediation programs, interagency mediator sharing programs, other local government programs, as well as ORM's own internal cadre of mediators.

The ORM Mediation Program is structured to offer the option of mediation to every individual who contacts an ORM EEO Counselor. When an aggrieved individual contacts an ORM Counselor about a potential complaint within the 45-day time limit, that individual will be told they have the choice of attempting to resolve the matter using the traditional informal counseling process or by using the mediation process. At that time the EEO Counselor also:

- Discusses with the aggrieved individual possible ways of resolving the issue;
- Explains the mediation process, applicable rights, and obligations of the parties.



If the aggrieved individual agrees to participate in mediation under the ORM Mediation Program, the pre-complaint processing period shall be extended up to 90 days. If the matter has not been resolved before the 90<sup>th</sup> day, the notice of right to file a formal complaint will be issued. Depending on the ORM Field Office policy, the ORM EEO Counselor or the ORM ADR Liaison is responsible for executing applicable forms. The Counselor will take steps to refer the matter to a local facility mediation program or make other arrangements to process the mediation request. If management is willing to engage in mediation, the mediation will normally be conducted and completed during this 90-day period. The EEO Counselor will contact the Local Facility ADR/Mediation Program Administrator, or if a local facility is not involved, the ORM ADR Liaison, about the mediation request. It is the Local Facility ADR/Mediation Program Administrator's responsibility to continue the mediation scheduling process and to make arrangements to obtain the services of a mediator. If a local facility is not involved, the ORM ADR Liaison will continue the mediation scheduling process.

Aggrieved individuals also have the option of going directly to a local mediation program to resolve their disputes. However, in order to preserve his or her statutory rights to file an EEO complaint, an aggrieved individual must contact an ORM EEO Counselor within the forty-five (45) day time limit. Contacting a Mediation Program Administrator or EEO and Affirmative Employment Program Specialist at the facility does **not** meet the forty-five (45) day statutory requirement.

The ORM Mediation Program Coordinator, located in the Office of Field Operations, Washington, DC, is responsible for the overall coordination of the ORM Mediation Program. ORM ADR Liaisons are located in each of the 12 ORM Field Offices to assist mediation efforts. Liaisons are responsible for developing that ORM field office's plan for obtaining mediators and for coordinating ADR activities. For a list of ORM ADR Liaisons, check the VA's ADR Internet site at http://www.va.gov/adr/index.htm and http://vaww.va.gov/adr/index.htm.

Federal employees from another federal (or state) agency in the local geographical area serve as mediators for a VA facility. In some locations, VA has paired up with one or two other federal agencies to share mediators. This is still cost effective, but a little more administratively difficult to manage. The exchange of mediator services is generally accomplished through a formal sharing arrangement between the federal agencies that have paired up. Travel expenses are generally paid by the using agency. Sometimes, reimbursement of the mediator's salary may also be required.

Utilizing sharing arrangements through the Federal Executive Board. In order to reduce their costs in pursuing the use of ADR in resolving workplace disputes, federal agencies have developed formal programs for "sharing" neutrals used in ADR applications. A number of collaborative and cooperative efforts



were accomplished through local Federal Executive Boards (FEB) which are established throughout the country. In some cities, FEBs have sponsored mediation sharing arrangements between the federal agencies in the area who wish to participate. The programs are generally administered by the FEB and operate on the principle that a pool of mediators is available for those agencies who agree to participate in the program. Travel expenses are generally paid by the using agency. To date, participating agencies seem to be satisfied with the program.

The following FEBs have developed shared neutral programs in their specific geographic areas. These FEBs are resources for facilities who wish to set up a shared neutrals program or use the services of such programs coordinated by the FEB. Additional information may be obtained from the following web site: <a href="http://www.opm.gov/er/adrguide/Section3-shared-neutrals.htm">http://www.opm.gov/er/adrguide/Section3-shared-neutrals.htm</a>

For more information about participating in a shared neutral program with other federal agencies in your area, contact the following FEB web sites:

- Buffalo, NY <a href="http://www.buffalo.feb.gov">http://www.buffalo.feb.gov</a>
- Boston, MA http://r1.1k.gsa.gov/gbfeb
- Chicago, IL <a href="http://www.chicago.feb.gov">http://www.chicago.feb.gov</a>
- Cincinnati, OH http://www.gcfeb.com
- Cleveland, OH http://www.lerc.nasa.gov/WWW/FEB
- Dallas Ft. Worth, TX http://www.epa.gov/earth1r6/6md/feb/index.htm
- Denver, CO <a href="http://www.dfeb.mms.gov">http://www.dfeb.mms.gov</a>
- Honolulu-Pacific, HI http://www.honolulu-pacific.feb.gov
- Kansas City, MO <a href="http://www.kansascity.feb.gov">http://www.kansascity.feb.gov</a>
- Los Angeles, CA http://www.losangeles.feb.gov
- Twin Cities, MN http://www.doi.gov/febtc
- New Orleans, LA http://www.nfc.usda.gov/feb
- Oklahoma City, OK http://www.ok.feb.gov
- Philadelphia, PA <a href="http://tsd.r3.gsa.gov/feb.htm">http://tsd.r3.gsa.gov/feb.htm</a>
- Pittsburgh, PA http://www.pittsburgh.feb.gov
- San Antonio, TX http://www.sanantonio.feb.gov
- San Francisco, CA http://www.gsa.gov/r9feb
- Seattle, WA http://www.northwest.gsa.gov/sfeb

Note: The above FEB web addresses may change. The most current websites can be located on OPM's home page at http://www.opm.gov/feb/index.htm#febweb.

Private or non-profit organizations provide mediator services to VA **facilities**. Generally this is not a particularly cost-effective way of obtaining mediators and should be considered as a last option. However, there may be extenuating circumstances which warrant such an arrangement. Therefore, facilities should be prepared to have a contingency plan for such situations. Many non-government resources are identified in Appendix P and Appendix R. However, this option is likely to be costly, with fees ranging from \$500 - \$1,000 per day. This may not include additional travel expenses.

#### Sample Sharing Programs

There are many types of "sharing" programs in existence throughout the VA and the federal government. The following are just a few examples of some of these.

Shreveport VAMC began the Alternate Dispute Resolution (Mediation) process by canvassing local federal and defense agencies to determine interest in participation in a joint ADR (Mediation) Program. Barksdale Air Force Base, Bossier City, LA indicated an interest in a collaborative effort. The Shreveport, LA, Alexandria, LA and Jackson, MS VA Medical Centers (VAMC) and Barksdale AFB selected employees to attend basic mediation skills training. Upon conclusion of training, the Shreveport VAMC and Barksdale Air Force Base formed an agreement to share mediators. The Alexandria, LA and Jackson, MS VA Medical Centers have verbally committed to provide mediator assistance if requested. Shreveport VAMC will also provide assistance to both medical centers if requested.

The Chicago area initiative, coordinated by the VA Regional Counsel, the Chicago Area VAMCs, and the National Acquisition Center, working through the Chicago Federal Executive Board, has resulted in the development of a cadre of trained mediators to provide services for VA and other federal facilities in that

VISN 8's Florida Mediation Project uses trained mediators from each Medical Center and the VA Office of Resolution Management, Bay Pines, FL, to provide shared mediation services for VISN 8 medical centers and clinics. The comediation model is used. Travel costs for the mediators are borne by the facility receiving mediation services.

The Air Force has trained more that 1,400 personnel as mediators. Some of those who were trained have mediated dozens of cases and have earned reputations as first-rate mediators. Others have mediated few or no cases at all. Given the range of mediation experience, the Air Force decided to establish a Mediation/Mentor Program. This program pairs experienced Air Force mediators with less



experienced mediators to give these individuals "hands on" apprenticeship training. If the mediation is unsuccessful, the inexperienced Air Force mediator still benefits from the training. If mediation works, the Air Force not only receives a training benefit, but also resolves the dispute.

## For further information about sharing mediators visit the following Internet and VA-Intranet sites:

http://www.va.gov/adr

http://vaww.va.gov/adr

http://www.va.gov/adr/bcashare.html,

http://www.cpradr.org/govtadr.htm

http://www.mmac.jccbi.gov/feb-okc/adr.html,

http://www.adr.af.mil/compendium/compendium.htm,

http://www.os.dhhs.gov/progorg/dab/flyerfin.html,

http://www.doi.gov/febtc/sharedn\_index.htm

#### **APPENDIX N:**

## VA OFFICE OF GENERAL COUNSEL AN ADR RESOURCE

Historically, the Department of Veterans Affairs, Office of the General Counsel (OGC) has taken a leadership role in the establishment of local and network ADR Programs in various locations across the country. OGC's policy concerning the use of ADR processes is articulated in OGC Directive 8001 and its accompanying Handbook, Alternative Dispute Resolution Program for the Office of General Counsel (December, 1999). This directive emphasizes the importance of employing techniques other than litigation or other formal adjudicatory process to address conflict, and directs each attorney to consider utilizing ADR techniques (with a particular emphasis on mediation) in every controversy or dispute.

The OGC has twenty-three Regional Counsel offices located throughout the country. Each Regional Counsel office has at least one designated ADR attorney. The ADR attorneys are available to assist VA facilities in establishing effective local mediation programs; in providing training in ADR/mediation to VA employees; and in assessing and evaluating the effectiveness of the local ADR programs. ADR attorneys are also available for serving as mediators in disputes arising at facilities not serviced by the Regional Counsel office to which the attorney is assigned.

For a current list of Regional Counsel ADR Attorneys, check the VA's ADR Internet site at <a href="http://www.va.gov/adr/index.htm">http://www.va.gov/adr/index.htm</a> and <a href="http://vaww.va.gov/adr/index.htm">http://vaww.va.gov/adr/index.htm</a>. As of March 2000, there are:

#### **VA Central Office**

Frederic Conway Senior Dispute Resolution Counsel Board of Contract Appeals (09) Department of Veterans Affairs 810 Vermont Avenue, N.W. Washington, D.C. 20420

Tel. (202) 273-6750

Email: Fred.Conway@mail.va.gov



Tony Belak Senior Dispute Resolution Counsel Office of Regional Counsel VA Regional Office Department of Veterans Affairs (327/02) 545 South Third Street Louisville, KY 40202

Tel. (502) 582-5871

Email: Tony.Belak@mail.va.gov

#### Region 1

#### Services VA facilities in Massachusetts, Connecticut, Rhode Island, Maine, and New Hampshire

Denise Ridge Office of Regional Counsel (02) **VA Medical Center** 200 Springs Road Bedford, MA 01730

Tel. (781) 687-3604

Email: Denise.Ridge@mail.va.gov

Bruce C. Williams Office of Regional Counsel (02) 1 VA Center Togus, ME 04330

Tel. (207) 623-5768

Email: Bruce.Williams@mail.va.gov

#### Services VA facilities in metropolitan New York City and **New Jersey**

**Aaron Fields** Kathleen Merkyl Office of Regional Counsel VAMC (527/02) 800 Poly Place **Building 14** Brooklyn, NY 11209

Tel. (718) 630-2900

Email: Kathleen.Merkyl@mail.va.gov Aaron.Fields@mail.va.gov

#### Region 3

#### Services VA facilities in Maryland, metropolitan Washington DC, and Martinsburg, WV

Paul Thomson Office of Regional Counsel VARO (372/02) 1120 Vermont Avenue NW **Suite 1013** Washington, DC 20421

Tel. (202) 691-3080

Email: Paul.Thomson@mail.va.gov



#### Services VA facilities in Pennsylvania and Delaware

David Adelman Office of Regional Counsel VARO (310/02) 5000 Wissahickon Avenue P.O. Box 13106 Philadelphia, PA 19101

Tel. (215) 381-3002

Email: <u>David.Adelman@mail.va.gov</u>

#### Region 5

#### Services VA facilities in Georgia and South Carolina

Patti Elrod-Hill Office of Regional Counsel (316/02) 730 Peachtree Street NE #575 Atlanta, GA 30365

Tel. (404) 347-3391

Email: Patty.Elrod.Hill@mail.va.gov

#### Services VA facilities in Florida, Puerto Rico and the Virgin Islands

Bonnie Glover Office of Regional Counsel (516/02) P.O. Box 5002 Bay Pines, FL 33744

Tel. (727) 398-9390

Email: Bonnie.Glover@mail.va.gov

#### Region 7

#### **Services VA facilities in Ohio and West Virginia (except** Martinsburg)

Mary Drennen Garcia Office of Regional Counsel VAMC (02) 3200 Vine Street Cincinnati, OH 45220

Tel. (513) 475-6421

Email: Mary.Garcia@mail.va.gov

#### **Services VA facilities in Tennessee and Arkansas**

Alan Foster
Office of Regional Counsel
Department of Veterans Affairs (320/02)
Federal Courthouse Annex
110 9th Avenue, South
Nashville, TN 37203

Tel. (615) 736-5326

Email: Alan.Foster@mail.va.gov

Gayle Sipes Office of Regional Counsel (350/02) 2200 Fort Roots Drive North Little Rock, AR 72114

Tel. (501) 370-6602

Email: Gayle.Sipes@mail.va.gov

#### Region 9

#### Services VA facilities in Mississippi and Alabama

Mike Sanderson Office of Regional Counsel VAMC (02-C) 700 19th Street, South Birmingham, AL 35233

Tel. (205) 933-4476

Email: Mike.Sanderson@med.va.gov

#### Services VA facilities in Illinois and Iowa

Bill Pellizzari Office of Regional Counsel VAMC (578/02) Building 50, Suite 210 P.O. Box 127 Hines, IL 60141

Tel. (708) 216-2216

Email: Bill.Pellizzari@mail.va.gov

Nancy C. Johnson Office of Regional Counsel VARO (333/02) 210 Walnut Street Suite 989 Des Moines, IA 50309

Tel. (515) 284-4090

Email: Nancy.Johnson@mail.va.gov

#### Region 11

#### **Services VA facilities in Detroit and Wisconsin**

Dona Tracey
Office of Regional Counsel (392/02)
Patrick V. McNamara Federal Building
Suite 1460
477 Michigan Avenue
Detroit, MI 48226

Tel. (313)226-4244

Email: <u>Dona.Tracey@mail.va.gov</u>



Denis McNamara Office of Regional Counsel Zablocki VAMC (330/02) 5000 West National Avenue Building 6 Milwaukee, WI 53295

Tel. (414) 382-5010

Email: Denis.Mcnamara@mail.va.gov

#### Region 12

#### Services VA facilities in Missouri, Kansas and Nebraska

Laurie Zeveski Office of Regional Counsel VAMC (657/02) 1 Jefferson Barracks Drive Building 25, 3rd Floor St. Louis, MO 63125

Tel. (314) 845-5050

Email: Laurie.Zeveski@mail.va.gov

Jim Klein Office of Regional Counsel VA Regional Office (334/02) 5631South 48th Street Lincoln, NE 68516

Tel. (402) 420-4275

Email: James.Klein@mail.va.gov

#### Services VA facilities in northern Texas and Oklahoma

Mark Jaynes
Office of Regional Counsel
Department of Veterans Affairs (674A4/02)
4800 Memorial Drive
Building 12
Waco, TX 76711

Tel. (254) 754-9300

Email: Mark.Jaynes@mail.va.gov

William Scales Office of Regional Counsel 1901 Veterans Memorial Drive Temple, TX 76704

Tel. (254) 899-4040

Email: William.Scales@med.va.gov

Nancy Moran Office of Regional Counsel VAMC (635/00C) 921 NE 13th Street Oklahoma City, OK 73104

Tel. (405) 270-5177

Email: Nancy.Moran@med.va.gov

#### Services VA facilities in southern Texas and Louisiana

Alan Ott Office of Regional Counsel VAMC 510 East Stone Avenue Shreveport, LA 71101

Tel. (318) 424-6196

Email: Alan.Ott@med.va.gov

#### Region 15

### Services VA facilities in Minnesota, North Dakota, and South Dakota

Pamela Saunders VA Medical Center (02) One Veterans Drive Minneapolis, MN 55417

Tel. (612) 727-5903

Email: Pamela.Saunders@mail.va.gov

Bruce W. Boyd Office of Regional Counsel VAM&ROC (438/02) 2501 W. 22nd Street P.O. Box 5046 Sioux Falls, SD 57117

Tel. (605) 333-6853

Email: <u>Bruce.Boyd@mail.va.gov</u>



#### Services VA facilities in Colorado, Wyoming, Montana and Utah

Doug Doane Office of Regional Counsel (339/02) 155 Van Gordon Street Box 25126 Denver, CO 80225

Tel. (303) 914-5810

Email: <u>Douglas.Doane@mail.va.gov</u>

#### Region 17

#### Services VA facilities in southern California

Cathy Lewitt Eric LaZare Office of Regional Counsel Department of Veterans Affairs 8810 Rio San Diego Drive San Diego, CA 92108

Tel. (619) 400-5240

Email: Cathy.Lewitt@med.va.gov Eric.Lazare@med.va.gov



#### Services VA facilities in northern California, northern Nevada, and Hawaii

Jack Maddan Office of Regional Counsel (662/02) VA Medical Center, Bldg 210 4150 Clement Street San Francisco, CA 94121

Tel. (415) 750-2288

Email: Jack.Maddan@mail.va.gov

#### Region 19

#### Services VA facilities in Arizona, New Mexico and southern Nevada

Kathleen Mucerino Office of Regional Counsel (345/02) Department of Veterans Affairs 3225 North Central Avenue **Room 305** Phoenix, AZ 85012

Tel. (602) 640-4742

Email: Kathleen.Mucerino@mail.va.gov

### Services VA facilities in Oregon, Idaho, Washington and Alaska

Karen Berry Office of Regional Counsel (348/02) Department of Veterans Affairs Suite 1224 1220 SW Third Ave Portland, OR 97204

Tel. (503) 326-2441

Email: Karen.Berry@mail.va.gov

Nadine Henley Office of Regional Counsel (346/02) Department of Veterans Affairs 1386 Federal Building 915 2nd Avenue Seattle, WA 98174

Tel. (206) 220-6202, ext. 3510 Email: Nadine.Henley@mail.va.gov

#### Region 21

#### Services VA facilities in upper New York and Vermont

Neil J. Nulty Office of Regional Counsel VAM&ROC (405/02) 215 North Main Street White River Junction, VT 05009

Tel. (802) 296-5116

Email: Neil.Nulty@mail.va.gov



#### Services VA facilities in Indiana and Kentucky

Cathy Burris
Office of Regional Counsel (326/02)
Department of Veterans Affairs
575 North Pennsylvania Street
Suite 309
Indianapolis, IN 46204

Tel. (317) 226-7876

Email: <u>Cathy.Burris@mail.va.gov</u>

#### Region 23

## Services VA facilities in North Carolina and central and southern Virginia

Kathleen Oddo Office of Regional Counsel VA Regional Office (314/02) 210 Franklin Road SW Roanoke, VA 24011

Tel. (540) 857-2162

Email: Kathleen.Oddo@mail.va.gov

## Appendix O

#### **APPENDIX 0:**

## DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER

#### MEDIATION AWARENESS EVALUATION FORM

NAME OF PROGRAM:			
DATE OF PROGRAM:			
YOUR SERVICE/ORGANIZATION:			
	Completely	Moderately	Hardly
1. To what extent were program objectives met in this session	5	3	1
2. How effective was this program in providing new knowledge or skills needed to enable you to use mediation to resolve conflicts?	5	3	1
3. What is your overall rating of this program?	Excellent	Average	Poor
4. What were the best educational aspect	s of this progran	n?	
5. As a result of this program, would you	ı feel comfortabl	e using mediation	on?
6. Comments on the training facility.			
7. Comments on the length of the progra	m.		
8. Comments on the relevance of the pro	gram.		

# Appendix O

#### **PROGRAM EVALUATION**

#### **MEDIATION TRAINING**

DATE:	
-------	--

Service Line	e/Section:	
Directions	Please complete the evaluation for	orm by circling the number that bec

Directions: Please complete the evaluation form by circling the number that best represents your opinion.

	Excellent	Above Average	Average	Below Average
I. EDUCATION OBJECTIVES				
As a result of attending this training, I am able to				
A. Describe how conflicts occurred	1	2	3	4
B. Show how conflict in the workplace is undesirable	1	2	3	4
C. List the steps to mediation	1	2	3	4
D. Determine which conflicts lend themselves to mediation	1	2	3	4
II. RELEVANCY				
A. Training helped me to better understand mediation	1	2	3	4
B. Training was clearly presented	1	2	3	4
C. Training addressed my needs for conflict resolution	1	2	3	4
D. I plan to apply to use this training to help me determine how to proceed if I experience conflict	1	2	3	4
III. TEACHING METHODS				
A. Methods used effectively and enhanced learning	1	2	3	4
B. Audio-visual media used contributed to instruction	1	2	3	4



C. Lecture format was appropriate for content	1	2	3	4
D. Printed materials will be helpful resources	1	2	3	4
E. Group activities were worthwhile	1	2	3	4
F. Question and answer sessions stimulated thought and discussion	1	2	3	4
IV. PRESENTATION				
A. The presenter was effective in his/her teaching	1	2	3	4
V. ENVIRONMENT				
A. The physical facilities contributed positively to the learning experience	1	2	3	4

#### VI. COMMENTS

- A. What were the most beneficial aspects of the class?
- B. What were the opportunities for improvement for this class?
- C. Other Comments.

Thank you for completing this evaluation!

#### **APPENDIX P:**

## ADR TRAINING AND INFORMATION RESOURCES

**Department of Veterans Affairs Office of Dispute Resolution** 

1800 G Street, NW

Suite 545

Washington, DC 20006

POC: Fred Conway or Pat Sheridan

(202) 273-8631 or (202) 273-6743

Department of Veterans Affairs Veterans Health Administration (VHA) Director, HRM Group (10ND)

810 Vermont Avenue, NW Washington, DC 20420

POC: James Lee (202) 273-5861

Department of Veterans Affairs Office of Resolution Management (ORM) ADR Coordinator (08)

810 Vermont Avenue, NW Washington, DC 20420

POC: ADR Coordinator

(202) 691-3442

Department of Veterans Affairs Veterans Benefits Administration (VBA) Office of Human Resources

810 Vermont Avenue, NW Washington, DC 20420

POC: Elaine Marshall or Larry Bennett

(202) 273-5911

Department of Veterans Affairs Employee Education System ADR Program Manager

311 W. Main Street Durham, NC 27701 POC: Jaime Marankovick (919) 680-6841

NOTE: Facilities should first contact their appropriate VISN Education Service Representative.

## **U.S. Office of Personnel Management Office of Workforce Relations**

Employee Relations and Health Services Center 1900 E. Street, NW Room 7425
Washington, DC 20415-2000
(202) 606-0967
FAX (202) 606-0967
www.opm.gov/er

#### Federal Mediation and Conciliation Service (FMCS)

2100 K Street NW Washington, DC 20427 (202) 606-8100 www.fmcs.gov



Federal Labor Relations Authority (FLRA)
Office of General Counsel
Partnership and Labor-Related Training
607 14<sup>th</sup> Street, NC
Washington, DC 20424

## **Department of Justice Office of Legal Education Institute**

1620 Pendleton Street Columbia, SC 29201 (803) 544-5121 FAX (803) 544-5110

#### **American Arbitration Association**

335 Madison Avenue New York, NY 10017 (212) 716-3968 FAX (212) 716-5906 www.adr.org

#### **Society of Professionals in Dispute Resolution (SPIDR)**

1730 Rhode Island Avenue NW Washington, DC 20036 (202) 783-7277 www.spidr.org

#### **National Institute for Dispute Resolution (NIDR)**

1726 M. Street, Suite 500 Washington, DC 20036 (202) 466-4764 www.crenet.org

#### **Academy of Family Mediators (AFM)**

P.O. Box 10501 Eugene, OR 97440 (503) 345-1205 www.mediators.org



## **American Bar Association Section of Dispute Resolution**

740 15<sup>th</sup> Street, NW Washington, DC 20005 (202) 662-1680

#### **American Management Association**

440 1<sup>st</sup> Street, NW Washington, DC 20001 (202) 347-3092 FAX (202) 347-4549

#### **CDR** Associates

100 Arapahoe Avenue, Suite 12 Boulder, CO 1-800-MEDIATE FAX (303) 442-7442 www.mediate.org

#### **Cooperative Consortium for Dispute Resolution**

(301) 384-6557 FAX (301) 384-3619

## Council for Better Business Bureaus, Inc. Dispute Resolution Division

4200 Wilson Blvd. Arlington, VA 22203-1804 1-800-334-2406 FAX (703) 296-0634 www.cbbb.org

#### **FPMI Communications**

707 Fiber Street Huntsville, AL 35801 (256) 539-1850 FAX (256) 539-0911 www.fpmi.com



#### **Justice Center of Atlanta**

976 Edgewood Avenue, NE Atlanta, GA 30307 (404) 523-8236 FAX (404) 523-3936 Christine@justicecenter.org

#### **New England Conflict Resolution Services**

190 University Drive Amherst, MA 01002 (413) 256-1575 FAX (413) 256-1207

#### Northern Virginia Mediation Service c/o Institute for Conflict Analysis and Resolution

George Mason University
4260 Chain Bridge Road, Suite A-2
Fairfax, VA 22030
(703) 759-9720
FAX (703) 993-3551
www.gmu.educdepartments.nvms

# Appendix Q

### **APPENDIX Q: VA'S ADR WEBSITE**

### Department of Veterans Affairs (VA) Alternate Dispute Resolution (ADR) and Mediation

The Department of Veterans Affairs maintains and regularly updates an extensive ADR and Mediation website on the VA Intranet at http://vaww.va.gov/adr/index.html and on the internet at http://www.va.gov/adr/index.html. There are a variety of materials addressing numerous topics including but not limited to:

The Mediation Process.

Communication Skills, Practicing Listening Skills.

Mediator's Checklist.

Two Sample Introductions for Mediators.

Active Listening for Mediators.

How to Overcome Impasse.

ADR Awareness/Introduction to ADR Training Slides.





## Appendix R

## APPENDIX R: ADR RESOURCE WEB SITES

#### **Federal Government**

Department of Veterans Affairs www.va.gov.adr

Interagency ADR Working Group (IADRWG)

www.financenet.gov

Equal Employment Opportunity Commission www.eeoc.gov

Federal Labor Relations Authority www.flra.gov

Federal Mediation and Conciliation Service www.fmcs.gov

Merit Systems Protection Board www.mspb.gov

Office of Personnel Management

www.opm.gov/er

Office of Special Counsel

www.osc.gov

Department of Agriculture www.usda.gov

Department of Air Force www.adr.af.mil

Department of Navy

 $\underline{www.ogc.secnav.hg.navy.mil/ogcwww/adr}$ 

Defense Logistics Agency www.dsee.dla.mil/offices/doccr/adr

Department of Education

www.ed.gov

Department of Energy www.gc.doe.gov/adr

General Services Administration www.gsa.gov/eeo/adr3.htm



Department of Justice

www.financenet.gov

Department of Labor

www.dol.gov/dol/asp/public/programs/adr/adrbrief

## ADR Resource Web Sites Non-Government

American Arbitration Association

www.adr.org

Society of Professionals in Dispute Resolution (SPIDR)

www.spidr.org

National Institute for Dispute Resolution (NIDR)

www.crenet.org

Academy of Family Mediators (AFM)

www.mediators.org

**CDR** Associates

www.mediate.org

**CPR Institute for Dispute Resolution** 

www.cpradr.org/welcome.htm

Law Journal EXTRA

www.ljextra.com/practice/arbitration/index.html

Mediation Information and Resource Center

www.mediate.com

Council for Better Business Bureaus,

Inc. Dispute Resolution Division

www.cbbb.org

**FPMI Communications** 

www.fpmi.com

Justice Center of Atlanta

Christine@justicecenter.org

Northern Virginia Mediation Service

www.gmu.educdepartments.nvms

#### **APPENDIX S:**

## SAMPLES OF VARIOUS VA FACILITIES' POLICIES, FORMS, AND BROCHURES

Note: Please refer to Chapter 7 of the Handbook for a general sample policy and related forms

#### **Policies**

Guidelines for Drafting Mediation Program Policies Mediation Program Policy – Florida Mediation Project Mediation Program Policy – No. CA Health Care System Mediation Program Policy – VAMC Birmingham, AL

#### Agreements to Mediate

Agreement to Mediate – Florida VA Mediation Project Agreement to Mediate – Piedmont Mediation Center, Inc. Agreement to Mediate – General

#### **Settlement Agreements**

Guidelines for drafting settlement agreements Settlement Agreement – VAMC Minneapolis, MN Settlement Agreement – Florida VA Mediation Project

NOTE: The VA Office of General Counsel is currently developing guidance to assist VA facilities in drafting effective settlement agreements. This guidance will be distributed to facilities as soon as it becomes finalized and should be applied to your current practices.

#### Survey/Evaluation Forms

Survey/Evaluation Form – Federal ADR Network Steering Committee Survey/Evaluation Form – Florida VA Mediation Project Survey/Evaluation Form – VAMC Palo Alto, CA Survey/Evaluation Form – VAMC Minneapolis, MN Survey/Evaluation Form – General Mediation Tracking Form – General



## GUIDELINES FOR DRAFTING MEDIATION PROGRAM POLICIES

Key elements that must be included in any Mediation Policy are:

- **Policy Statement**—Discuss the facility's commitment to using mediation as an alternative method for resolving disputes.
- **Memorandum--** should originate from Medical Center Director.
- **Purpose**—Articulate the reasons for developing the mediation program.
- **Background**—Summarize the history of mediation in federal workplace disputes; Review statutes, regulations and negotiated agreements pertinent to mediation.
- Goals—List what the facility hopes to accomplish by using mediation.
- **Resources**—Identify budget and staffing requirements for the program.
- Roles, Responsibilities, Definitions

  —Articulate common meanings and terminology of important terms, identify responsible officials, as well as the roles and responsibilities of the various stakeholders in the mediation program.
- **Procedures**—Outline the procedures that a user can expect to follow when using the mediation program. These procedures should begin by addressing where an individual who has questions about mediation and the facility's program should go, how mediators are assigned to matters, and what happens at the conclusion of the mediation.
- Mediators—Identify how and from what sources the facility plans to obtain mediators, how they will be assigned and any follow-up or reporting requirements.
- Case Selection—Identify what types of cases are appropriate or not appropriate for mediation and who (or what group) will make the decision to accept a dispute for mediation.
- **Training Requirements**—Identify the training needs of all stakeholders and identify responsible official for carrying out ongoing training and education.
- **Evaluation**—Identify how the program will be evaluated and the responsible individuals or group.



#### SAMPLE MEDIATION PROGRAM POLICY

#### JAMES A. HALEY VETERANS' HOSPITAL TAMPA, FLORIDA 33612 HOSPITAL POLICY MEMORANDUM NO. 05-15 FEBRUARY 1998

#### **MEDIATION PROGRAM**

**Purpose.** To establish the policy and procedures for administration of the Florida VA Mediation Program.

**Policy.** The James A. Haley Veterans' Hospital is committed to assisting employees in finding creative, acceptable solutions to disputes and encourages the use of mediation as an alternative approach to resolving disputes. This includes, but is not limited to, disputes that have been filed in a formal forum such as the Agency's Equal Employment Opportunity Complaint Program, Merit Systems Protection Board (MSPB), grievances (negotiated procedure and agency procedure) and arbitration through the Federal Labor Relations Authority (FLRA). The Florida VA Mediation Program, administered by the Mediation Program Manager, Office of Regional Counsel, Bay Pines, Florida, will assign selected VA mediators to this hospital and to other Medical Centers within the Florida Network. The Mediation Program Manager retains administrative authority over the program.

**Definitions.** *Mediation* – Mediation is a process where a trained, neutral third party assists two or more parties to negotiate a mutually agreeable solution to their dispute. Mediation is voluntary, informal and confidential. Both parties must agree to mediate; either party may terminate the mediation process at any time. Mediation emphasizes early intervention and problem-solving rather than a long adversarial process. In most instances, the mediator assigned to cases within this hospital will be from another medical center in the state of Florida. Employees may elect to have a personal representative or an attorney at any stage of the mediation.

Florida Mediation Project (FMP) – A program of the Office of Regional Counsel, Bay Pines, Florida, which assists parties in finding creative, acceptable solutions to disputes.

*Mediation Program Manager (MPM)* – Office of Regional Counsel, administers the Florida Mediation Project. The MPM reviews cases to determine if appropriate for mediation and assigns mediators to serve as third party neutrals in resolving disputes arising in any Medical Center in the state of Florida.



Alternate Dispute Resolution (ADR) Coordinator – Manages administrative details (e.g., coordinating requests, scheduling, travel, assisting mediator with technical problems, etc.) of mediation and is the liaison between the hospital, outpatient clinics and the Mediation Program Manager.

#### **Delegation of Responsibility**

The **Director** is responsible for approval, establishment and continuance of a Mediation program at this hospital and affiliated outpatient clinics and for designating appropriate staff to administer the program. In those cases in which the provisions of the mediated agreement go beyond the scope of authority of the Service Chief, final approval/disapproval of the mediated agreement will be by the Director (or designee). The Director will designate the hospital official with the authority to approve any mediated settlement. The Director will appoint an Alternate Dispute Resolution (ADR) Coordinator.

**Service Chiefs** are responsible for maintaining awareness and commitment to mediation as a voluntary, alternate form of resolution in disputes that arise within their service. They are to ensure that service supervisors meet their obligation to fully support mediation efforts involving employees.

**Supervisors** are responsible for maintaining an awareness of mediation as an alternate form of resolution in disputes that arise within the workplace, and for cooperating to the fullest extent in any mediation efforts that involve themselves and/or employees they supervise.

**EEO Counselors and Union Officials** are responsible for making aggrieved employees aware of mediation as an alternate method of dispute resolution. The VA/AFGE Master Agreement provides for mediation as one method of alternate dispute resolution for employees covered by that contract. The James A. Haley Professional Nurses' Unit of the Florida Nurses Association endorses the use of mediation as a method of alternate dispute resolution.

**Employee Assistance Counselors** are responsible for making employees aware of mediation, if appropriate.

**Employees** are responsible for considering mediation as an alternate form of resolution in disputes that arise within the workplace. Consideration to this method may be given prior to initiation of any formal method of dispute resolution (e.g., EEO, grievances, MSPB) or at any time during the process of formal methods.

#### **Procedures**

**Initiating Mediation** 



- Requests for information or assistance concerning mediation may be initiated by contacting Namoi Sweeting, Alternate Dispute Resolution (ADR) Coordinator, Human Resources Management Service, or Sheila Brewington, EEO Manager
- Dale Leftridge, EEO Specialist
- An EEO Counselor
- Service Chief
- AFGE Representative
- FNA Representative
- EAP Counselor
- Bonnie Glover, Mediation Program Manager Office of Regional Counsel, Bay Pines, FL

#### **Steps in the Mediation Process**

Either party to a dispute may initially request mediation. However, both parties must agree to the process prior to screening by the Mediation Program Manager. Mediation utilizes the following method:

- 1. If a request has been made to individuals other than the ADR Coordinator or the Mediation Program Manager, the individual receiving the request for mediation must immediately contact the ADR Coordinator or Mediation Program Manager so that written requests can be completed. All parties to the dispute must sign the Request for Mediation form.
- 2. The Mediation Program Manager will review the case for appropriateness.
- 3. If a case is appropriate for mediation, the Florida VA Mediation Project will retain a neutral VA mediator and will notify the ADR Coordinator of the name of the mediator. In some cases, co-mediators will be retained.
- 4. The ADR Coordinator, working with the Mediation Program Manager, and all involved parties, will schedule the time and place for mediation, review the components of the process, e.g., confidentiality requirements, binding nature of written agreements, statutory deadlines, etc., with the parties, and expedite the completion of any necessary forms.
- 5. The mediator will meet with the disputing parties to assist with communicating points of view in contention and developing an acceptable resolution of these issues.
- 6. When a mutually acceptable agreement is reached, a formal, binding agreement is prepared for the parties to sign. Contents of this agreement are



confidential. The terms of the agreement will only be revealed to those needing information in order to process any condition agreed upon during the mediation.

#### Cases Not Appropriate for Mediation

Certain cases may not be appropriate for mediation (e.g., criminal acts, patient abuse. Workers' Compensation, and other cases as deemed by the Mediation Program Manager). If a case is not appropriate for mediation, the Mediation Program Manager will notify the ADR Coordinator, who will inform the parties. The ADR Coordinator will refer the disputant(s), as appropriate, to other methods of resolution.

#### Conclusion of Mediation

If mediation results in an agreement between the disputants, a written settlement agreement will be drafted and signed before concluding the mediation process. Only the VA official with the authority to settle the mediation may sign on behalf of the hospital and affiliated outpatient clinics. If the parties cannot reach an agreement through the mediation process, the usual methods of resolving disputes are still available provided the party meets any required time limits for filing the dispute. Neither party gives up his/her right to pursue a dispute formally.

**References.** Administrative Dispute Resolution Act, 5 U.S.C. 582, 1990.

**Rescission.** HPM No. 05-15, October 6, 1995.

(Signature) Director



#### SAMPLE MEDIATION PROGRAM POLICY

#### NORTHERN CALIFORNIA HEALTH CARE SYSTEM MEDICAL CENTER MEMORANDUM

SEPTEMBER 3, 1998

#### **MEDIATION PROGRAM**

**I. Purpose:** To publish the policy on the Mediation Program.

**Definition:** Mediation is a process whereby a neutral third person called a mediator acts to encourage and facilitate the resolution of a dispute between two or more parties. It is a confidential, informal, private, non-adjudicative and nonadversarial process with the objective of helping the disputing parties reach a mutually acceptable and voluntary agreement. In mediation the mediator is not authorized to make decisions or force a decision on any party to the dispute.

**Scope:** Mediation can be used at the Northern California Health Care System (NCHCS) to resolve a variety of differences including grievances, discrimination complaints, employee/employee disputes, supervisor/employee disputes, patient complaints and other workplace differences.

**II. Policy:** NCHCS actively supports using local mediation to resolve differences or disputes and has instituted the Mediation program to facilitate this policy of using mediation as a method to promote principles and practices that will facilitate communication and working relationships. Using mediation to resolve differences demonstrates a commitment to a positive approach and joint ownership of concerns and solutions. The mediation process allows parties to resolve their differences quickly, less formally, in a less adversarial manner and with more efficient use of resources than are involved with traditional dispute mechanisms. Mediation is a problem solving process, voluntary, confidential, mutually agreed upon, and unbiased.

#### III. Procedures:

#### A. Responsibilities:

1. Mediator: The role of the mediator includes, but is not limited to, reviewing the ground rules for mediation sessions (Attachment D), assisting the parties to identify issues, fostering joint problem solving, and exploring settlement opportunities. The mediator shall not provide counseling, therapy, or legal advice to either party during the mediation process. If, however, the mediator



believes that either party does not understand how an agreement may adversely affect legal rights or obligations, then the mediator should bring this issue to the attention of all parties involved.

- **2.** *Management:* will support the mediation program by encouraging Service Chiefs and line supervisors to use the mediation process.
- **3.** AFGE Local 1206 Bargaining Unit: will designate a Union Representative who will serve as AFGE Mediation Facilitator. AFGE Local 1206 will inform membership of mediation as a potential alternative or interim step to the formal grievance process.
- **4. EEO Manager:** will serve as the EEO Mediation Facilitator and inform complainants of mediation as an alternative to filing a formal EEO complaint.
- **5.** *Employees:* will be kept informed about mediation through handouts, brochures, staff meetings, videos, etc.
- **6.** Human Resources Management Service: will ensure the selection of a Management Mediation Facilitator and be responsible for information preparation and dissemination in coordination with the Mediation Steering Committee. The mediation process will become part of the new employee's orientation.

#### B. Requirements:

#### 1. Requests for Mediation

- a. Requests for mediation shall be in writing, preferably on the approved form and signed by both the disputants (see Attachment A).
- b. Requests will be forwarded to the Mediation Coordinator, who will assign a mediator in coordination with the EEO Mediation Facilitator, the AFGE Mediation Facilitator, and/or the Management Mediation Facilitator within two (2) working days.
- c. Removal for cause may not be appropriate for mediation, but will be dealt with on a case by case basis.

#### 2. Acceptance of a Mediation Request

- a. A request for mediation may be made and accepted at anytime, with the understanding that both disputants must agree to mediate their dispute (see Attachment B).
- b. Submission of a dispute to mediation may require that the parties agree to the extension of time periods in other proceedings which will be made without loss of rights. EEO and Grievance procedures have provisions which,



with agreement of the parties, permit time period extensions without loss of rights for the disputants. Mediation does not suspend statutory deadlines.

**I. References**: Administrative Dispute Resolution Act, 5 U.S.C. 582, 1990

II. Date of Expiration: Open

III. Distribution: "C"

(Signature)

Medical Center Director

#### SAMPLE MEDIATION PROGRAM POLICY

## DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER BIRMINGHAM, ALABAMA MEMORANDUM NO 00-

**AUGUST** , 1998

#### **MEDIATION PROGRAM**

- **1. PURPOSE:** To define policy, assign responsibility and outline the process for resolving disputes.
- **2. SCOPE:** This policy/program will be utilized at the medical center and all satellite clinics operated by the Birmingham VA Medical Center.

#### 3. DEFINITIONS:

- **a. Alternative Dispute Resolution (ADR) Council** is a working group responsible for selecting nominees for mediation training with the concurrence and approval of the Medical Center Director.
- **b.** Co-Mediators are Mediators who work together to mediate a particular dispute.
- **c.** The Complainant/Disputant is the individual who is alleging that something adverse has happened. The complainant is responsible for entering into mediation in good faith.
- **d.** The Management Representative (who is not a disputant) is the individual from management who has the option to attend the mediation session to represent the VA. The management representative is responsible for participating in the mediation process in good faith.
- **e. Mediation** is a process whereby a neutral third party, called a mediator, acts to encourage and facilitate the resolution of a dispute between two or more parties. The process is voluntary and confidential. It is a mutually agreed upon, unbiased, informal, and private process with the objective of helping the disputing parties reach a mutually acceptable agreement. In mediation, mediators are not authorized to make decisions or force a decision on any party to the dispute.
- **f. Mediation Sessions** are confidential and the parties agree that if the matter is not settled, the mediators cannot be used by either party as witnesses in future



litigation or any other process used to settle the issues of the dispute. A Mediation session is a structured process which enables the parties to exchange information, listen to one another's position and jointly consider various options that are mutually advantageous to both parties. Parties in mediation should agree that they are not aware of any conflicts with and are, therefore, willing to use the appointed Mediators.

- **g. Mediation Program Coordinator** is responsible for processing the initial intake form, scheduling dates mutually acceptable for all parties, scheduling a suitable area for the mediation process, assigning mediators and tracking the process in compliance with the Mediation Policy. The Mediation Program Coordinator will maintain all original copies of agreements in a locked cabinet. Assures proper assignment of mediators to avoid conflicts of interest in the mediation process.
- h. Mediator is an objective third party who assists the parties in working toward a compromise agreement. The mediator's role includes, but is not limited to, assisting the parties to identify issues, fostering joint problem solving, and exploring settlement opportunities. The Mediator is not a decision-maker and does not have the power to force a decision on either party. Mediators shall not provide counseling, therapy, or legal advice to either party during the mediation process. They are generally Birmingham VAMC employees who have received special training in conflict resolution techniques that help disputing parties resolve their problem. Mediators are neutral individuals who have no relationship to either party and no personal interest in the outcome of the dispute they are mediating. Mediators may be selected from outside the facility if warranted.
- **4. POLICY:** To assure a work environment that is conducive to the delivery of high quality patient services, the Birmingham VA Medical Center is dedicated to finding a creative, acceptable and early resolution of disputes at the lowest possible level and has instituted the Mediation Program to facilitate this policy.
- **a**. Mediation may be used to resolve all workplace and employment disputes that include supervisor/employee, employee/employee, Service/Service, patient complaints, and other workplace differences.
- **b**. Mediation may be used to resolve differences, and demonstrates a commitment to a positive approach and joint ownership of concerns and solutions.
- **c.** Allows parties to resolve their differences quickly, less formally, less adversarial and with more efficient use of resources than traditional dispute mechanisms.
- **d.** The ADR Council shall be appointed by the Medical Center Director and shall be comprised of the following individuals. Chair: EEO Program Manager; Members: Service Chiefs; Office of Regional Counsel; representative of Human



Resources Management Service; representative of American Federation of Government Employees (AFGE) Local 2207; and consensually agreed upon rank and file employees.

Mediators should not be assigned to process disputes in their own Service.

- **f.** The Regional Counsel will be contacted whenever a question arises regarding the appropriateness of the dispute and to ensure the Settlement Agreement is in order.
- **g.** Certain cases may not be appropriate for mediation. If it is determined that a case is not appropriate for mediation, the management or union official will notify the Mediation Program Coordinator who will refer the disputing individuals, as appropriate, to other methods of resolution.

#### 5. RESPONSIBILITY:

- **a**. The Medical Center Director is responsible for approving, supporting, establishing, and continuing a Mediation Program at the medical center, and designating appropriate staff to be on the ADR Council. All Settlement Agreements (Attachment E) that arise out of mediation will be submitted to the Medical Center Director or his designee for information.
- **b.** The ADR Council is responsible for selecting nominees for mediation training with the concurrence and approval of the Medical Center Director. The ADR Council will monitor the Mediation Program activities and submit a semi-annual report to the Director. The Council will also be responsible for developing mediation pamphlets, appropriately maintaining bulletin boards describing the Mediation Program, disseminating information about mediation, and encouraging employees to participate in the mediation process to settle their disputes.
- **c.** The EEO Program Manager will serve as the Mediation Program Coordinator. He/She will complete a Mediation Intake Form on all requests for mediation for tracking purposes, assign Mediators from the Roster of Mediators, issue the Mediation Information Sheet (Attachment A) to all individuals interested in mediation, and track the Mediation program using the User Satisfaction Sheet (Attachment F). The Mediation Program Coordinator will submit a written report at least semi-annually to the Partnership Council.
- **d.** The Partnership Council will be responsible for supporting, educating, and encouraging participation in the Mediation Program.
- **e.** Union officials are responsible for facilitating mediation awareness and training within the medical center; encouraging the use of mediation among union stewards and employees; participating to the fullest extent in any mediation effort that involves a member of the bargaining unit; and serving as an advocate in and for the program. Union representatives are responsible for entering into and participating in mediation in good faith.



**f.** All employees are encouraged to consider mediation as an alternate form of resolution of disagreements and disputes that arise in the workplace and will be kept informed about mediation through training, handouts, brochures, staff meetings, etc. Training on the Mediation Program will become part of the New Employee Orientation. All employees are responsible for knowledge of an adherence to this policy.

#### **6. PROCEDURE:**

- **a. Requests for Mediation.** Either party to a dispute may request mediation. Mediation requests may be initiated by calling the Mediation Program Coordinator at extension 5498 to initiate the mediation process.
- **b.** Acceptance of a Mediation Request. A request for mediation can be made and accepted at any time, with the understanding that both disputing individuals must voluntarily agree to mediate their dispute. The Mediation Program Coordinator will ensure that all parties agree to mediation within five (5) working days of the initial request to mediate. Submission of a dispute to mediation may require that the parties agree to an extension of time periods in other proceedings that will be made without loss of rights.
- **c. Mediation Ground Rules.** Mediation Program Coordinator, or EEO Program Manager, shall apprise the Complainant/Disputant and/or aggrieved individual of their rights and give that individual a copy of the Mediation Ground Rules (Attachment B).
- **d.** Assignment of Mediator and Co-Mediator. The Mediation Program Coordinator shall assign mediators on a rotating basis from the Mediator Roster maintained by the Mediation Program Coordinator. If either or both parties object to one or both of the Co-Mediators assigned to a particular matter, the Mediation Program Coordinator will immediately assign another Mediator from the roster. The Mediation Program Coordinator will assign Mediators within five (5) business days of the Acceptance of Mediation Request by all parties.
- **e.** Signing the Agreement to Mediate. The parties and all persons participating in the mediation must sign an Agreement to Mediate (Attachment C) prior to the mediation. The document sets forth the requirements for both parties entering into mediation in good faith to resolve their differences.
- **f. Procedures After the Agreement to Mediate.** The initial session will be scheduled as early as possible, normally within five (5) business days after receipt of the assignment by the assigned mediators. No later than five (5) days prior to the date scheduled for the mediation, the Mediators should confirm the time, date, and place for the mediation with all participating parties. The Mediation Program Coordinator will make sure all the key participants are present for the mediation and will coordinate the location of the mediation. The

Mediation Information Sheet (Attachment A) will be used to brief the parties regarding the mediation process.

- **g.** Conducting the Mediation Process. Attorneys, Advocates, or Representatives from either or both parties may be present and participate in the mediation, although they are not required to do so. Unlike formal litigation, the attorney or representative typically takes a "back seat" in the mediation session. Attorneys, advocates, or representatives are responsible for entering into and participating in mediation in good faith. A Settlement Agreement (Attachment E) shall be prepared at the request of the disputing individuals if agreement is reached. If no agreement is reached, the Mediator will prepare a No Agreement Letter (Attachment D) for the concerned parties. At the conclusion of the mediation, the Mediators shall destroy all notes and documentation concerning the mediation that is in their possession. The parties will be asked to complete a User Satisfaction Sheet (Attachment F). The Mediator will complete a self-evaluation of the case and forward all signed documents to the Mediation Program Coordinator.
- h. Evaluating the Mediation Process. All evaluations will be sent to the Mediation Program Coordinator for collating and analysis. An evaluation report will be submitted to the Partnership Council twice a year.

#### 7. REFERENCES:

- a. Administrative Dispute Resolution Act of 1996, 5 U.S.C. Section 572;
- **b.** Article 6 of the VA/AFGE National Master Agreement;
- **c.** Executive Order No. 131062, 62 FR 51755, 1997 WL 610757 (President);
- d. Title 29, Code of Federal Regulations, Sub-part 1614
- 8. AUTOMATIC REVIEW, RESCISSION OR REISSUE DATE: August 2000.

(Signature) Medical Center Director

Attachments Distribution A

#### SAMPLE AGREEMENT TO MEDIATE

#### **ALTERNATIVE DISPUTE RESOLUTION**

FLORIDA VA MEDIATION PROJECT
Office of Regional Counsel
P.O. Box 5002
Bay Pines, FL 33504
(813) 398-9390

#### AGREEMENT TO MEDIATE

The parties understand that mediation is a voluntary process and agree to engage in mediation. The parties understand that the mediator has no authority to decide the case and is not acting as advocate or attorney for any party. The parties understand that they have a right to have a representative assist them during the mediation process.

The parties also understand that another method of resolution to their conflict may exist, such as EEO, MSPB, Grievance or Arbitration. The parties are aware that it is their responsibility to institute or continue with these processes in a timely manner. The parties know that statutory time deadlines may exist which may prevent them from bringing their dispute to other forums of resolution.

Mediation is a confidential process. Any documents submitted to the mediator and statements made during the mediation are for settlement purposes only. The parties agree not to subpoen the mediator or any documents prepared by or submitted to the mediator. The mediator will not testify on behalf of any party or submit any type of report on the substance of this mediation. Confidentiality will not, however, extend to threats of imminent physical harm or criminal activity.

The parties and their representatives also agree not to discuss statements made by any party during the mediation process or divulge the terms of the settlement without the express consent of all parties to the mediation.

No party shall be bound by anything said or done at the mediation unless a written settlement is reached and signed by all necessary parties. If a settlement is reached, the agreement shall be reduced to writing and, when signed and approved by the appropriate authorities for the parties, shall be binding upon all parties to the agreement.

By signature, we acknowledge that we have read, understand and agree to this "Agreement to Mediate." We have also been given the opportunity to ask any questions of the mediator in order to clarify the purpose and process of mediation.



Party I.	
Name:	Date:
Representative:	Date:
Party 2.	
Name:	Date:
Representative:	Date:

## Appendix S

#### SAMPLE AGREEMENT TO MEDIATE

MR #	Court Date:
	Referred by:
1998/99	

#### THIS FORM MUST BE READ ALOUD

Piedmont Mediation Center, Inc. P.O. Box 604, Statesville, NC 28687 To: Mr. Eugene T. Morris, Jr., District Attorney P. O. Box 1854, Lexington, NC 27293-1854

County Case #	Charge:
Defendant:	Complainant

#### CONFIDENTIALITY AGREEMENT

As a participant in this mediation, I understand and agree to the following:

- Everything said in this mediation is to be held in confidence and cannot be used by the District Attorney for any purpose.
- Mediation is a voluntary process for both the disputants and the mediators.
- The purpose of this mediation is to try to resolve this dispute.
- Every participant must agree to abide by the ground rules set by the Center.
- Disputants agree to live up to their part of any agreement reached as a result of this mediation.
- Disputants agree to not involve the mediators, staff, or records of the Center in any court proceedings related to this dispute.
- Disputants understand that the Center and/or the mediators are not parties in the judicial proceedings related to this dispute.



•	Disputants agree to not hold the mediators or the Center liable for any act or
	omission as a result of this mediation.

•	Child abuse cannot be mediated per North Carolina law. Please ask for
	clarification if child abuse is a part of your dispute.

Signature:	Witnessed by:
Companion Cases:	
-	
	UNDERSTANDING
As a disputant or particip	pant in this mediation, I agree to the following:
• That this "understand	ling" is a result of a voluntary mediation of a dispute.
• This is the final settle	ement of the dispute described below.
	ute arise out of the performance of this agreement, or the ne Center is to be notified.
Additional mediation	appointments may be necessary to resolve this dispute
Relationship of the Partic	es:
Brief Summary of this D	ispute:
Piedmont Mediation Cen	at: All parties agree that this understanding, made at atter, Inc., will resolve the dispute, and request that the sall pending charges in this case.
Dofondant	Complainant:
——————————————————————————————————————	Complamant.

Director:

#### SAMPLE AGREEMENT TO MEDIATE

#### MEDIATION AGREEMENT

I agree to enter into this mediation process in a good faith attempt to sincerely resolve this dispute. I understand that mediation is voluntary and may be terminated at any time by any party or the mediator if mediation is not assisting the parties in reasonably and fairly understanding and resolving the issues presented.

I understand that the mediator has no authority to make decisions, nor is the mediator acting as an advocate or attorney for any party. Any party may have a representative present during the sessions and/or review a proposed agreement prior to signing.

I agree not to subpoena or request as a witness any mediator, or request or use as evidence any materials prepared by or for the mediator for the mediation, with the exception of a settlement document signed by all parties. In no event will the mediator voluntarily testify on behalf of any party or submit any type of report in connection with this mediation. Every person present agrees further that anything said to the mediator and specifically noted to be confidential shall remain confidential, unless otherwise authorized by the parties. All notes of the mediator will be destroyed following the completion of the mediation.

MEDIATION CLIENT	DATE
MEDIATION CLIENT	DATE

#### SETTLEMENT AGREEMENTS

#### **Drafting Mediation Agreements**

An agreement reached through mediation is a binding and enforceable contract between all signatories. As such, it is very important that the written document reflect accurately the mediation process. When legal counsels are present or available it is wise to involve these experts in drafting the document. However, this does not mean that the agreement should read like a legal treatise with complex technical language, but should accurately reflect the intentions of the parties.

The agreement is the parties' terms of settlement, not necessarily dry and impersonal, nor emotionally cathartic. It should reflect the intentions of the parties in an objective and balanced manner. If attorneys were involved in the dispute being mediated, then the mediator(s) should ensure that all parties have signed only with the advice and consent of their representatives. Failure to do so may jeopardize the ultimate settlement. An interim agreement or draft agreement or agreement in principle will suffice until the parties consult their attorneys.

The mediator's objective in drafting the agreement for the parties is to create a document which is clear, balanced, responsive, and reflective of the parties' needs and interests. The task of drafting the agreement is one of the most important functions in the mediation effort. The agreement must use language that the parties can understand and should be specific enough so there are no future disagreements about the meaning of the words and intentions. Implementation steps should be identified along with some form of review or revision based on future performance or events.

#### DRAFT SMART AGREEMENTS

S.....SPECIFIC

M....MEASURABLE

A.....ACHIEVABLE

R.....REASONABLE

T.....TIMELY

- Consider all parameters of the dispute:
- address all issues raised during mediation
- test the parties' understanding of the agreement
- bind parties for possible breach of the agreement
- use balanced and reciprocal language
- encourage return to mediation in event of breach of the agreement
- focus on the future
- precisely define personalized issues
- Verify ability of parties to fulfill terms of the agreement:
- do they have the power and authority to bind themselves and others?
- can this be done without violating policy or contract?
- must others be informed or be aware of these terms before signing?
- Reality check the parties:
- ask parties, "what can you do to make this agreement fail?"
- ask why this agreement is going to change their relationship
- ask if they are satisfied that the agreement addresses primary issues and interests

- ask what resources might be necessary to fulfill the agreement
- be sensitive to the internal conflicts of the respective parties
- Reality check the agreement:
- ask if it should be reviewed by legal or technical experts
- does it include a provision to return to mediation in event of misunderstanding or confusion
- how long is the agreement expected to last?
- determine a time-frame for review and revision of the agreement by others
- don't lose the energy of the moment.
- Drafting language:
- use clear, simple, and understandable words to express the parties' intent
- include mutual obligations for the parties
- balance and reciprocate the tasks and promises.
- be specific and don't invite future conflicts

#### **SAMPLE SETTLEMENT AGREEMENT**

#### MEDIATION SETTLEMENT AGREEMENT

#### **VETERANS AFFAIRS MEDICAL CENTER** MINNEAPOLIS, MINNESOTA

1. Ili accordance with the Millineap	ons v A Medicai Center Mediation Policy#
Resolution Agre	ement, we have participated in a Mediation Ad
	, and being satisfied that we
have reached a fair and reasonable	settlement, hereby agree as follows:
contract. Settlements will not serve	to be a binding and enforceable settlement e as precedent for resolving any other or may be filed by the complainant or any other
3. Settlement of the issues is made wrongdoing by any party to the ag	with no blame or admission of guilt or reement.
4. The settlement is voluntarily ent	ered into by the undersigned parties.
Dated this day of	, 20
Employee:	Representative:
Employee:	Representative:

#### **SAMPLE SETTLEMENT AGREEMENT**

#### FLORIDA VA MEDIATION PROJECT MEDIATION SETTLEMENT AGREEMENT

1. It is hereby stipulated and agreed to by _	
, , , , , , , , , , , , , , , , , , , ,	(Name of Agency Official)
and	
(Name	of Employee)
that the matter involving	
(Brief	f description of complaint)
shall be voluntarily settled in accordance w conditions:	<u> </u>
(Insert terms agreed to, including dates for paragraph number for each element of the s	1 1
2. In exchange for the above consideration, all claims against the United States government and any officer of government in their official or individual compatter of the informal or formal complaint and further agrinitiate or participate in any action as a part for any claim as enumerated above.	ment, any agency or department of the or employee of the United States apacity, arising out of the subject filed by the Complainant on (date) rees and states that he/she will not
3. After execution, a copy of this settlemen Florida VA Mediation Project and the dispersional copy of the settlement of	
(complaint, griev	ance, etc.)
shall be dismissed with prejudice.	
The parties agree that the entire mediation and All promises, conduct and statements made	1 0

are confidential and will not be disclosed voluntarily to the extent permitted by

law. <u>See</u> 5 U.S.C. 574. The parties also agree that they will not disclose or discuss the settlement with other agency employees (except his or her representative and responsible management personnel). The parties also authorize the Department of Veterans Affairs to disclose the terms of this agreement to officials who may need to review and approve the terms of this settlement agreement.

The parties may also agree, mutually, to disclose the terms of this agreement to the below named individual/s to assist in the enforcement of this agreement. The parties do understand that this individual must be fully informed as to his/her role in the enforcement of this agreement and must consent prior to this obligation prior to this agreement being ratified. The named individual/s are:

- 5. By executing this settlement agreement, the Disputants acknowledge that this agreement was the result of mediated negotiations and is the subject of mutual consideration; and that this agreement was made freely and fairly and was not the result of any duress or bad faith negotiations.
- 6. This settlement does not constitute either an admission or concession of wrongdoing by either the Disputant or the Agency and will not be represented as such by anyone.
- 7. The Disputant states that he/she is fully aware of the meaning of this document and the consequences of signing it; that he/she enters into this agreement freely and voluntarily; that he/she understands and agrees that he/she will receive no consideration beyond that recited in this agreement; and that no representations or promises by the Department of Veterans Affairs or any of the Agency's officers, employees, agents attorneys or other representatives except those stated in this document have influenced him/her in entering into this settlement.
- 8. The Agency and the Disputant agree to be bound by the terms and conditions of this agreement and agree that this settlement constitutes full, entire and final resolution of the matter described above, whether on an informal or formal level.
- 9. If the Complainant believes the Agency has not complied with the terms of this settlement agreement he may, under 29 C.F.R. Sec. 1614.504, notify the Director of Equal Employment Opportunity within 30 days of the date of the alleged violation.

10. If there is an allegation	of breach	of this	agreement,	the	parties	have a	an op	tior
of returning to mediation.								

(Disputant's Signature)	(Agency Official's Signature)



Date	Date
Representative's Signature	Representative's Signature
Date	Date
Agreement Mediated By:	

#### SAMPLE SURVEY/EVALUATION FORM

January 5, 1998

To: Federal ADR Network Steering Committee

From: Evaluation Subcommittee

**Subject:** Federal Agency Model Surveys

The Evaluation Subcommittee has completed the development of a model EEO mediation evaluation survey and a model mediation customer satisfaction survey. See Appendix A & B. The Subcommittee recommends that the Federal ADR Network (FAN) Steering Committee consider establishing an Evaluation Library on the Internet to host these items.

## APPENDIX A EEO EVALUATION SURVEY

The Evaluation Subcommittee of the Federal ADR Network ("FAN") is composed of more than 15 members from agencies across the federal government. For the past year, the group has met monthly to discuss evaluation issues, share information and address specific evaluation questions. In response to numerous requests, the group has developed an EEO Evaluation Survey ("the Survey") that is intended to serve as a model for agencies to use in tailoring a design to meet their specific evaluation needs. One purpose of the Survey is to encourage agencies to collect and measure certain "core" data that would provide a minimum basis for comparison among agencies.

The Survey is divided into sections based on five categories of information — background, mediation process, mediator assessment, mediation outcome and anecdotal data. Because of the wide differences among agency EEO processes, the Survey is designed to allow agencies to choose only those categories and questions that meet their individual needs. The Subcommittee believes certain information is essential and should be included in any evaluation effort. Questions relating to this basic information have been designated "core" and are identified by an asterisk. Additional questions have been included to meet individual agency needs to identify additional issues to be considered.

A list of members of the Evaluation Subcommittee who have contributed to the development of the Survey is appended for your convenience. Please contact any of the members if you would like additional information.



## APPENDIX A Model Mediation Program EEO Evaluation Survey

The [INSERT AGENCY] is continually trying to find ways to improve its services. One way we do this is by asking customers about their experiences and opinions. You can help us serve you better by completing this questionnaire. Your assistance will help, but your response is voluntary. Thank you!

#### **EEO EVALUATION SURVEY**

\* Denotes a core question, one necessary to provide a minimum of survey data.

#### SECTION ONE: BACKGROUND

- \*1. When was this complaint filed or the EEO counselor first contacted? Specify the month/year.
- \*2. Which of the following best describes your role in the mediation?
- a. Complainant or employee
- b. Supervisor
- c. Representative for complainant
- d. Representative for supervisor or agency
- 3. If you chose a. or c. above, are you or was your representative a(n): Choose all that apply.
- a. Attorney
- b. Union representative
- c. Co-worker
- d. Other personal representative
- 4. Did you request mediation?
- a. Yes
- b. No
- \*5. Was this mediation mandatory?
- a. Yes
- b. No
- \*6. If not, why did you participate in the mediation process?
- a. Personal choice
- b. Suggested by friend or co-worker, supervisor, EEO counselor, or Human Resources (circle one)



- \*7. Have you attended or received training regarding the mediation process, its goals and benefits?
- a. Yes
- b. No
- \*8. What was the basis of the EEO complaint in this dispute? Check all that apply.
- a. Race
- b. Color
- c. Religion
- d. Age
- e. National Origin
- f. Gender
- g. Retaliation
- h. Disability
- i. Other \_\_\_\_\_
- 9. Have you participated in the regular administrative process for EEO complaints (other than mediation), e.g. 29 CFR 1614, before?
- a. Yes
- b. No
- 10. If yes, please indicate the highest stage of the EEO process that your complaint reached.
- a. Counseling
- b. Formal complaint
- c. EEO hearing
- d. Court
- \*11. Have you participated in mediation before?
- a. Yes
- b. No

### **SECTION TWO: MEDIATION PROCESS**

- \*1. In your opinion, was the mediation process an appropriate way to resolve your concerns and/or issues?
- a. Very appropriate
- b. Somewhat appropriate
- c. Neither appropriate nor inappropriate
- d. Somewhat inappropriate
- e. Very inappropriate
- 2. Were the mediation sessions scheduled for a time and place convenient for you?
- a. Yes
- b. No

Use the following scale to answer Questions 3 through 8.

- a. Very satisfied
- b. Somewhat satisfied
- c. Neither satisfied nor dissatisfied
- d. Somewhat dissatisfied
- e. Very dissatisfied
- 3. How satisfied were you with the amount of time spent in mediation?
- 4. How satisfied were you with the amount of information you received about the mediation process?
- \*5. How satisfied were you with the opportunity you had to present information and your point of view of the dispute?
- 6. How satisfied were you with how well you understood what was going on during the mediation?
- \*7. How satisfied were you with the agreement to mediate?
- \*8. How satisfied were you with the mediation process?

### SECTION THREE: MEDIATOR ASSESSMENT

Use the following scale to	answer Questions	1 through 3.
----------------------------	------------------	--------------

- a. Very effective
- b. Somewhat effective
- c. Neither effective nor ineffective
- d. Somewhat ineffective
- e. Very ineffective
- \*1. \_\_\_\_ During the introductory statement, how well did the Mediator(s) explain the process?
- \*2. How effective was the Mediator(s) in clarifying the key issues and interests?
- \*3. In your opinion, how effective was the Mediator(s) in hearing your concerns and/or issues?
- \*4. \_\_\_\_ How satisfied were you with the Mediator(s)?
- a. Very satisfied
- b. Somewhat satisfied
- c. Neither satisfied nor dissatisfied
- d. Somewhat dissatisfied
- e. Not satisfied

Use the following scale to answer Questions 5 through 8.

- a. Strongly agree
- b. Somewhat agree
- c. Neither agree nor disagree
- d. Somewhat disagree
- e. Strongly disagree
- \*5. \_\_\_\_There was no pressure from the Mediator to settle the dispute during the mediation.
- \*6. \_\_\_\_ Mediator(s) treated all parties equally.
- \*7. \_\_\_\_ Mediator(s) helped create realistic options for settling the dispute.
- \*8. \_\_\_\_ Mediator(s) understood the issues involved.
- \*9. Was (were) the Mediator(s) from another federal agency?
- a. Yes
- b. No
- \*10. If yes, was this helpful?
- a. Yes
- b. No
- c. No Opinion



- \*11. Was this a co-mediation?
- a. Yes
- b. No
- 12. If yes, was it beneficial to have two mediators?
- a. Yes
- b. No

### **SECTION FOUR: MEDIATION OUTCOME**

- \*1. Did mediation resolve this dispute?
- a. Yes, completely
- b. Yes, partially
- c. No (if no, skip to question 4)
- 2. When was settlement reached OR the mediation ended? Specify the month/year: \_\_\_\_\_
- 3. The following questions concern the outcome of the mediation. Please tell us how satisfied you are with the following aspects of the outcome.

Use the following scale to answer Questions 3 through 6:

- a. Very satisfied
- b. Satisfied
- c. Neither satisfied nor dissatisfied
- d. Dissatisfied
- e. Very dissatisfied
- \*3. \_\_\_\_ Overall outcome of the mediation.
- 4. \_\_\_\_ Outcome of mediation compared with what you expected before the mediation.
- 5. \_\_\_\_ Control you had over the outcome of the mediation.
- 6. \_\_\_\_ How long the mediation process took, from time of filing to close of mediation.
  - 7. How did mediation change your opinion of the other party?
    - a. Very positively
    - b. Positively
    - c. Neither positively nor negatively
    - d. Negatively
    - e. Very negatively



- \*8. If an agreement was reached, do you consider it to be:
  - a. Very fair
  - b. Fair
  - c. Neither fair nor unfair
  - d. Unfair
  - e. Very unfair
- \*9. Would you use mediation again?
- a. Yes
- b. No

### **SECTION 5 - ANECDOTAL DATA**

- \*1. What could be done to improve the mediation process? Feel free to use the back, if necessary.
- \*2. We would appreciate any additional comments. Feel free to use the back, if necessary.

## FAN EVALUATION SUBCOMMITTEE SURVEY CONTRIBUTORS

### NAME AGENCY PHONE

Terry Brown IRS Appeals (202) 418-5011
Delores Crawford GAO (202) 512-4715
Kate Dorrell DOL (202) 219-8927
Terry Fenton FDIC (202) 736-3099
Ted Henry EEOC (202) 663-4575
Tom Louthan IRS Appeals (202) 401-4098
Martha McClellan FDIC (202) 736-0512
Jim Moore National Archives (301) 713-7017
Joe Popiden EEOC (202) 663-4612
Lee Scharf EPA (202) 564-5143



## APPENDIX B Model Mediation Program Customer Satisfaction Survey

The [INSERT AGENCY] is continually trying to find ways to improve its services. One way we do this is by asking customers about their experiences and opinions. You can help us serve you better by completing this questionnaire. Your assistance will help, but your response is voluntary. Thank you!

#### **CUSTOMER SATISFACTION SURVEY**

- \* Denotes a core question, one necessary to provide a minimum of survey data.
- \*1. Please rate your overall level of satisfaction with the mediation process itself.

[Circle the number that represents your choice]

- 1 Completely satisfied
- 2 Somewhat satisfied
- 3 Neither satisfied nor dissatisfied
- 4 Somewhat dissatisfied
- 5 Completely dissatisfied

*2. Describe the type of settlement that resulted from the mediation process.
[] Full settlement of all issues
[] No settlement of any issues
[ ] Partial settlement
3. Did the mediation have any impact on other, related or unrelated, issues?
[] Yes
[ ] No

- \*4. Please rate the following attributes on a scale of 1 to 5 by circling the number that represents your choice, where:
- 1 =Strongly agree
- 2 =Somewhat agree
- 3 = Neither agree nor disagree
- 4 = Somewhat disagree
- 5 =Strongly disagree

If you Don't Know or are Unable to Judge, circle number 6

- a. The mediation process was impartial 1 2 3 4 5 6
- b. The mediator was impartial 1 2 3 4 5 6
- c. Both sides negotiated in good faith 1 2 3 4 5 6
- d. The mediator was effective 1 2 3 4 5 6



e. The mediator helped create realistic options for settling the dispute 1 2 3 4 5 6
<ul> <li>5. A. Did you save money by using mediation instead of litigation? [Note: consider the cost of counsel, expert witnesses, discovery, etc.]</li> <li>[] No</li> <li>[] Yes&gt; How much money did you save?</li> <li>[] Minimal amount [] Moderate amount [] Substantial amount</li> </ul>
<ul><li>B. Did you save time by using mediation instead of litigation?</li><li>[] No</li><li>[] Yes&gt; How much time did you save?</li><li>[] Minimal amount [] Moderate amount [] Substantial amount</li></ul>
*6. Would you use mediation again? [ ] Yes [ ] No
*7. Is there anything the [ INSERT AGENCY] could do to improve the mediation process? [ ] No [ ] Yes> Please explain:

Your comments are welcome:

### SAMPLE SURVEY/EVALUATION FORM

### **MEDIATOR'S SURVEY**

VA MEDIATION PROJECT
DEPARTMENT OF VETERANS AFFAIRS
OFFICE OF REGIONAL COUNSEL
P.O. BOX 5002
BAY PINES, FL 33504
(813) 398-9390



because of her sex/female).

What was the initial relief sought by the participants (i.e., amount of money, etc.)?
How much time was spent in the mediation process?
How much were your travel costs?
Was an agreement reached?
If this case did settle, please describe the most important factor or factors which you believe were most critical in bringing about the settlement.
Was there an amount of money involved in the settlement?
Was there a change of position involved in the settlement?
If this case did not settle, please describe the most important factor or factors which you believe were most critical in not settling.
Was the technical assistance you received sufficient?  If no, please comment.
Was the support provided by the Florida Mediation Project sufficient?  If no, please comment.
Was the authorized management official available during the mediation process? If no, please explain.

If this case did settle, please explain what the most important factor was in
bringing about the settlement.

If this case did not settle, please explain what the most important factor was in not settling.

Was mediation appropriate in this case? Please elaborate.

Were there any problems which interfered with the mediation process? Please explain.

Please include any other comments which you feel are pertinent to this case.

We thank you for your comments which will allow us to assess the VA mediation process and make any necessary changes.

Signature of mediator (optional)



# Appendix S

### **SAMPLE SURVEY/EVALUATION FORM**

## VA PALO ALTO HEALTH CARE SYSTEM MEDIATOR SELF EVALUATION

1 =	strongly disagree	2 = somewhat disagree strongly agree	e 3 = 9	somewh	at agree	4 =
1.	I put the parties	at ease?	1	2	3	4
2.	The parties und	erstood the process?	1	2	3	4
3.	I explained my r	ole effectively?	1	2	3	4
4.	I advised the pa	rties about confidentia	lity? 1	2	3	4
5.	I let the parties of	explain their respective	position	ons? 2	3	4
6.	I handled my en constructively?	notions and those of th	e partio	es 2	3	4
7.	Both parties app	peared to feel that I wa	s neutr 1	al? 2	3	4
8.	I determined the	e complainant's desired	d resolu 1	ution? 2	3	4
9.	I suggested sett	lement options?	1	2	3	4
10.	I was effective in the parties?	n dealing with the friction	on betv 1	veen 2	3	4
11.	I was effective in power between	n dealing with any imbathe parties?	alance 1	in 2	3	4
12.		ning I did that may hav s of the settlement effo		cted fro Yes	m	No
13.	If Yes to #12 ab	ove, please list.				



14.	How can I improve?			
15.	Overall Lwas: Poor	Not so good	OK	Great

# Appendix S

4

### SAMPLE SURVEY/EVALUATION FORM

## VA Palo Alto Health Care System Mediation User Satisfaction Survey

1. Please rate the following items on a scale of 1 to 4 by circling the number that represents your choice:

1 = strongly disagree 3 = somewhat agree 2 = somewhat disagree 4 = strongly agree

2 = Somewhat disagree	4 = Strongly	agree			
a. The mediation process was imp	oartial.	1	2	3	4
b. The right parties were at the tal	ole.	1	2	3	4
c. Both sides negotiated in good f	aith.	1	2	3	4
d. Mediation was appropriate for t	his matter.	1	2	3	4
e. You were able to fully present y	our side.	1	2	3	4
f. The mediator helped create a p	ositive atm	osphe 1	re. 2	3	4
g. The mediator helped create rea	alistic optio	ns for	settling 2	the ma	atter. 4
			_	_	

h. The mediator was impartial. 1 2 3

i. The mediator participated the right amount.1 2 3

j. The mediator listened well. 1 2 3 4

k. The mediator helped clarify the key issues of the parties.

1 2 3 4

I. The mediator explained the process well. 1 2 3 4

m. The mediator was fair.	1	2	3	4
n. The mediator was effective.	1	2	3	4
o. I would use mediation again.	1	2	3	4
p. I was satisfied with the process?	1	2	3	4
Describe the type of settlement that resurprocess.  Full settlement of all issues     No settlement of any issues     Partial settlement of the issues	lted from	ı the m	ediatio	n
3. Please describe any other impacts or be the mediation process. Examples might communication enhanced, office product etc.	include	relatio	nships	repaired,
4. Is there anything that you think should be mediation Program? Yes No	oe done	to impi	ove the	e PAHCS
Please provide any comments:				



When completed, <i>please</i> en your outbox addressed to: <i>Thank you!</i>	nclose in envelope, seal, and place in "ADR/Partnership"

### SAMPLE SURVEY/EVALUATION FORM

## MINNEAPOLIS VAMC MEDIATION PROGRAM PARTICIPANT'S EVALUATION FORM

Thank you for participating in mediation. By filling out the following form, you have an opportunity to help us evaluate and improve our service.

### **Instructions**

Please complete the evaluation as soon as possible and return to the Mediation Coordinator (05). If you need more space for your answer, use the back page or attach additional sheets.

1. What were your reasons for deciding to participate in Mediation? (Check as many as apply).
a. Wanted a quick resolution
b. Believe people should communicate and cooperate when they have a dispute
c. Thought mediation would take less time
d. Wanted to find out what kind of case the other party has
e. Wanted to find out what the other party would offer for settlement
f. Thought we could both make concessions and reach an agreement.
g. Thought it would be used against me if I did not participate.
h. I was advised to participate (By whom: e.g., union, supervisor, co-worker)
i. Nothing to lose; no reason not to
j. I thought I could convince the other party to agree with me
k. Previous experience with mediation
l. Other reasons (what are they?)
2. Prior to the mediation, did you receive enough information about what to expect during the session?
a. Yes b. No If no, what kind of additional information would have helped you?



3. Did you seek and receive advice from someone for this mediation?
a. If yes, who (e.g., a mediator, your supervisor, etc.)
4. Did the mediator(s) explain what was going to happen in mediation?
a. Completely b. Mostly c. Somewhat d. Not at all
5. During the session, were you able to discuss the issues that were important to you?
a. Completely b. Mostly c. Somewhat d. Not at all
6. Did the mediator(s) create an atmosphere where information was shared in a productive manner?
a. Completely b. Mostly c. Somewhat d. Not at all
7. Do you feel the mediator(s) understood the problem being addressed?
a. Completely b. Mostly c. Somewhat d. Not at all
8. Did the mediator(s) unfairly favor either side during the mediation session?
a. Yes b. No c. Somewhat Please explain:
9. Did you resolve your dispute?
a. Yes b. No
10. In general, how satisfied are you with the mediation process?
a. Very satisfiedb. Satisfied
c. Neither satisfied nor dissatisfied
d. Dissatisfied
e. Very dissatisfied
11. Would you use mediation again?
11. Would you use mediation again?
a. Yes b. No c. Perhaps



- 12. Would you recommend mediation to others?
- a. Yes \_\_\_\_ b. No \_\_\_\_
- c. Perhaps \_\_\_\_
- 13. Please list three things you liked most about the mediation and/or the mediator's approach?
- 14. Do you have suggestions for improving services provided by our Mediation program or any other comments?

### SAMPLE SURVEY/EVALUATION FORM

### **MEDIATION SURVEY**

Now that you have completed mediation, please take a few minutes to fill this out. Your input is very important and will help us improve this program. Your answers will be completely confidential, and will only be used in the aggregate for statistical purposes. See this <u>note</u> if your browser has trouble submitting forms.

1. In this mediation, were you the:

Complainant/Plaintiff (person with the complaint)		
Respondent/Defendant		
Other		
2. Were you mediating an:		
EEO complaint		
Grievance		
Workplace concern		
Other		
3. What is your relationship to the other party at the mediation? (e.g., first level supervisor, second level, co-worker, team leader/member, etc.)		
4. If you brought someone to the mediation what was their relationship to you? (co-worker, family member, union representative, attorney)		
5. Was it helpful to you to have that person there?		
very helpful		
somewhat helpful		
slightly helpful		
not helpful		
6. Who else was at the mediation (e.g., someone from H.R., second line management, etc.)?		



7. Was there someone else who would have been helpful to have at the mediation?
Yes
No
If so, who?
8. Approximately how many hours did you spend in mediation?
9. Approximately how much time elapsed from the beginning of mediation until the end?

10. Who suggested mediation?

The following questions ask about your experiences in the 'Mediation.'	
11. My experience participating in the mediation was completely satisfactory	, .
agree strongly	•
agree somewhat	
disagree somewhat	
disagree strongly	
12. I felt the mediation process was entirely fair.	
-	
agree strongly	
agree somewhat	
disagree somewhat	
disagree strongly	
13. The mediator(s) did a good job of explaining the mediation process.	
agree strongly	
agree somewhat	
disagree somewhat	
disagree strongly	
14. Participating in the mediation took too much of my time.	
agree strongly	
agree somewhat	
disagree somewhat	
disagree strongly	
15. I was treated with respect during the mediation.	
agree strongly	
agree somewhat	
disagree somewhat	
disagree strongly	
16. During the mediation, I was given ample time to tell my side of the story.	
agree strongly	
agree somewhat	
disagree somewhat	
disagree strongly	



17. We were able to discuss all of the important issues during mediation.
agree strongly
agree somewhat
disagree somewhat
disagree strongly
18. I trusted the mediator(s).
agree strongly
agree somewhat
disagree somewhat
disagree strongly
19. The mediator(s) maintained a neutral position towards both parties.
agree strongly
agree somewhat
disagree somewhat
disagree strongly
20. Both parties, rather than the mediator(s), made the decisions about the outcome of the mediation.
agree strongly
agree somewhat
disagree somewhat
disagree strongly
21. I had enough information to prepare for the mediation.
agree strongly
agree somewhat
disagree somewhat
disagree strongly
22. If I had another dispute or problem like this one, I would want to try mediation to resolve it.
agree strongly
agree somewhat
disagree somewhat



disagree strongly				
23. I would recommend mediation to others at the Department.				
agree strongly				
agree somewhat				
disagree somewhat				
disagree strongly				
24. If not, why not?				
25. I think my relationship with the other party will be improved because we participated in mediation.				
agree strongly				
agree somewhat				
disagree somewhat				
disagree strongly				
26. I feel I had a better outcome through mediation than if I used other more traditional methods.				
agree strongly				
agree somewhat				
disagree somewhat				
disagree strongly				
27. Did you reach an agreement? (If yes, please answer questions 32-36. If no, please continue to question 37.)				
Yes				
No				
28. If an agreement was reached, were you satisfied with the terms?				
very satisfied				
somewhat satisfied				
slightly satisfied				
not satisfied				
29. What were the general terms of your agreement?				



30. What would you have done if an agreement were <b>not</b> reached in mediation?
31. How long do you think it would have taken you to get the problem resolved if you did not mediate?
32. If no agreement was reached, do you believe the mediation was still helpful?  very helpful somewhat helpful slightly helpful
not helpful 33. If you found there were benefits from the mediation regardless of whether you reached an agreement, please describe them:
34. What did you like best about mediation?
35. What, if anything, did you like least about mediation?

### THANK YOU FOR YOUR COMMENTS.

36. Any comments that might help us improve this program?

## Appendix S

### **SAMPLE MEDIATION TRACKING FORM**

### **MEDIATION TRACKING**

Mediator Names							
Did a	Did a mediation occur? Yes No If no, why not						
	of Mediation: tor Time (Include preparation time):						
Servic	e(s) of Disputants:						
CATE	GORY OF ISSUE:						
	EEO						
	Grievance						
	Co-worker conflict						
	Supervisor to Staff conflict						
	Other:						
DESC	RIPTION OF ACTIONS:						
	Resolved. Written agreement signed? Yes No						
	Not resolved.						
	Referred to Union						
	Referred to EEO						

	Referred to Employee Assistance program
	No referrals
RECOMMEN	NDED FOLLOW-UP (e.g., Training, etc.):